



Neutral Citation Number: [2025] EWCA Civ 1311

Case No: CA-2025-001983

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
THE HONOURABLE MR JUSTICE CHAMBERLAIN
[2025] EWHC 2013 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17 October 2025

Before :
THE LADY CARR OF WALTON-ON THE-HILL,
THE LADY CHIEF JUSTICE OF ENGLAND AND WALES
LORD JUSTICE LEWIS
and
LORD JUSTICE EDIS

Between:

**THE KING ON THE APPLICATION OF HUDA
AMMORI**

Respondent
/Cross-
Appellant

- and -

**SECRETARY OF STATE FOR THE HOME
DEPARTMENT**

Appellant/
Cross-
Respondent

Sir James Eadie KC, David Blundell KC, Ben Watson KC, Andrew Deakin, Natasha Barnes, Stephen Kosmin and Karl Laird (instructed by the Government Legal Department)
for the Appellant/Cross-Respondent

Raza Husain KC, Blinne Ní Ghrálaigh KC, Paul Luckhurst, Owen Greenhall, Audrey Cherryl Mogan, Mira Hammad, Rosalind Burgin and Grant Kynaston (instructed by Birnberg Peirce Solicitors) for the Respondent/Cross-Appellant

Tim Buley KC, Dominic Lewis and Jesse Nicholls (instructed by the Special Advocate Support Office) as Special Advocates by written submissions only

Hearing date: 25 September 2025

Approved Judgment

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The Lady Carr of Walton-on-the-Hill CJ handed down the following judgment of the court:

INTRODUCTION

1. This appeal concerns an organisation known as Palestine Action. By an Order made on 4 July 2025 (“the Order”), which took effect on 5 July 2025, the appellant, the Secretary of State for the Home Department, added Palestine Action to the list of proscribed organisations in Schedule 2 to the Terrorism Act 2000 (“Schedule 2”) (“the Act”). That had the consequences that various acts, such as belonging to, or supporting, Palestine Action would involve the commission of a criminal offence.
2. Prior to the making of the Order, Ms Ammori, one of the founders of Palestine Action, issued a claim for judicial review of the decision to add Palestine Action to the list in Schedule 2. She sought permission to apply for judicial review on eight grounds. That application was considered by Chamberlain J. (“the Judge”) at an oral hearing on 25 July 2025.
3. In his written judgment handed down on 30 July 2025, the Judge ruled, as a preliminary issue, that an application to the Secretary of State to remove Palestine Action from the list in Schedule 2 (referred to as “deproscription”), together with the right of appeal to the Proscribed Organisations Appeal Commission (“POAC”) against a refusal of the application, was not an adequate alternative remedy to a claim for judicial review of the initial decision to add Palestine Action to the list in Schedule 2. He held that the case could therefore proceed by way of a claim for judicial review in the Administrative Court. He granted permission to apply for judicial review on two grounds, but refused permission on six other grounds (only four of which are material for present purposes).
4. The Secretary of State appeals, with permission, against the decision on the preliminary ruling that an application to deproscribe an organisation, coupled with a right of appeal to POAC, was not an adequate alternative remedy to a claim for judicial review. This appeal, therefore, concerns solely the question of whether the claim should be allowed to proceed by way of judicial review in the Administrative Court. It has nothing to do with the substantive merits of the claim.
5. In essence, the Secretary of State submitted that judicial review is a remedy of last resort and should only be used where an adequate or suitable alternative remedy was not available. She submitted that Parliament had established the procedure of applying for deproscription, with a further right of appeal, as a means of challenging the continued proscription of an organisation. She submitted that where Parliament had established a particular appeal route which was intended for use in a category of cases, that appeal procedure ordinarily was an adequate alternative remedy for dealing with those cases. Further, the Secretary of State submitted that the Judge was wrong in deciding that there were exceptional circumstances which meant that an appeal to POAC was not an adequate remedy in this case. In particular, it was submitted that the Judge erred (1) in relying on the fact that judicial review would be more expeditious than an appeal to POAC, (2) in his assessment of the detriment to Ms Ammori and others if an appeal rather than judicial review had to be pursued, (3) in

his analysis of the implications for those charged with criminal offences, (4) in his consideration of the differences between POAC and the Administrative Court considering a claim for judicial review, and (5) in rejecting the submission that the availability of judicial review would render the deproscription and appeal route otiose. It was submitted that the Judge had also erred in not following the decision of Richards J. in *R (Kurdistan Workers' Party) v Secretary of State for the Home Department* [2002] EWHC 644 (Admin).

6. Separately, Ms Ammori seeks permission to appeal against the decision of the Judge to refuse permission to apply for judicial review on grounds 1, 5, 6 and 7 of the claim. She does so by means of a Respondent's Notice filed on 3 September 2025. That raises the question of whether the application for permission was made out of time, as it was not made within seven days of the decision of the Judge refusing permission to apply for judicial review (as contemplated by CPR 52.8). Prior to the hearing before us, Ms Ammori had not applied for an extension of time, on the basis that she considered that none was needed. However, at the hearing, she indicated that she would wish to seek an extension of time if one were needed. The Court gave directions at the hearing on 25 September 2025 fixing a timetable for such an application to be made. In accordance with that timetable, Ms Ammori applied for an extension of time on 30 September 2025, that application being supported by a witness statement of Ms Sally Middleton dated 29 September 2025. The Secretary of State responded by written submissions dated 3 October 2025. Ms Ammori replied by written submissions dated 6 October 2025.
7. For completeness, we note that the Special Advocates filed a note shortly before the hearing which was to be treated as closed material. Having read the note, we did not consider that the note needed to be treated as closed material and could be disclosed to all the parties. Following the hearing, the Secretary of State confirmed that the note could (with minor amendments) be disclosed to the parties as open material. The note was then provided to all parties to enable them to comment.

THE STATUTORY FRAMEWORK

8. The Act, as its long title indicates, is intended to make provision about terrorism. Part I of the Act defines terrorism. Section 1 provides that "terrorism" means action falling within subsection (2) and where the use or threat of such action is designed to influence the government or an international organisation or to intimidate the public or a section of it, or is done for the purposes of advancing a political, religious, racial or ideological cause. Subsection 1(2) provides that:

“(2) Action falls within this subsection if it–

- (a) involves serious violence against a person,
- (b) involves serious damage to property,
- (c) endangers a person's life, other than that of the person committing the action,
- (d) creates a serious risk to the health or safety of the public or a section of the public, or

(e) is designed seriously to interfere with or seriously to disrupt an electronic system.”

9. Part II of the Act deals with proscribed organisations. Section 3 is headed “Proscription” and provides as follows, so far as material:

“3.— Proscription.

(1) For the purposes of this Act an organisation is proscribed if—

(a) it is listed in Schedule 2, or

(b) it operates under the same name as an organisation listed in that Schedule.

.....

(3) The Secretary of State may be order—

(a) add an organisation to Schedule 2;

(b) remove an organisation from that Schedule;

(c) amend that Schedule in some other way.

(4) The Secretary of State may exercise his power under subsection (3)(a) in respect of an organisation only if he believes that it is concerned in terrorism.

(5) For the purposes of subsection (4) an organisation is concerned in terrorism if it—

(a) commits or participates in acts of terrorism,

(b) prepares for terrorism,

(c) promotes or encourages terrorism, or

(d) is otherwise concerned in terrorism”.

10. The making of orders is regulated by section 123 of the Act. An order may not be made under section 3(3) unless a draft has been laid before and approved by each House of Parliament: see section 123(4)(a) of the Act.

11. Sections 11 to 13 of the Act provide that a person commits an offence if he does certain specified acts in connection with a proscribed organisation. These include belonging to a proscribed organisation (section 11), inviting support for the organisation (section 12), or wearing an item of clothing or wearing, carrying or displaying an article, in such a way as to arouse reasonable suspicion that the person concerned is a member or supporter of the organisation (section 13). There are further offences concerned with terrorist property (defined in section 14 as money or property

likely to be used for the purposes of terrorism, including any resources of a proscribed organisation). Those offences include inviting a person to provide money or other property intending that it be used for the purpose of terrorism (section 15), using money or property for the purposes of terrorism (section 16), fund-raising for the purposes of terrorism (section 17) and money laundering (section 18).

12. Section 4 is headed “Deproscription: application” and provides as follows, so far as material:

“4. Deproscription: application

(1) An application may be made to the Secretary of State for an order under section 3(3) or (8)–

(a) removing an organisation from Schedule 2, or

(b) providing for a name to cease to be treated as a name for an organisation listed in that Schedule.

(2) An application may be made by–

(a) the organisation, or

(b) any person affected by the organisation's proscription or by the treatment of the name as a name for the organisation.

(3) The Secretary of State shall make regulations prescribing the procedure for applications under this section.

(4) The regulations shall, in particular–

(a) require the Secretary of State to determine an application within a specified period of time, and

(b) require an application to state the grounds on which it is made.”

13. The Secretary of State has made the Proscribed Organisations (Applications for Deproscription etc.) Regulations 2006 (“the Regulations”). These provide detailed provisions for the making of applications under section 4(1) of the Act (i.e. an application for an order removing the name of an organisation from Schedule 2 to the Act or providing for a name to cease to be treated as a name for an organisation listed in Schedule 2). Regulation 7 provides that the Secretary of State must determine an application within a period of 90 days beginning with the day after the day on which he receives an application.

14. Section 5 is headed “Deproscription: appeal”. That section establishes POAC and provides for an appeal to POAC against a refusal of an application to deproscribe an organisation (i.e. a refusal to remove the organisation from the list in Schedule 2):

“5.— Deproscription: appeal.

(1) There shall be a commission, to be known as the Proscribed Organisations Appeal Commission.

(2) Where an application under section 4 has been refused, the applicant may appeal to the Commission.

(3) The Commission shall allow an appeal against a refusal to deproscribe an organisation or to provide for a name to cease to be treated as a name for an organisation if it considers that the decision to refuse was flawed when considered in the light of the principles applicable on an application for judicial review.

(4) Where the Commission allows an appeal under this section, it may make an order under this subsection.

(5) Where an order is made under subsection (4) in respect of an appeal against a refusal to deproscribe an organisation the Secretary of State shall as soon as is reasonably practicable—

(a) lay before Parliament, in accordance with section 123(4), the draft of an order under section 3(3)(b) removing the organisation from the list in Schedule 2, or

(b) make an order removing the organisation from the list in Schedule 2 in pursuance of section 123(5).”

15. An order must be laid in draft and approved by each House of Commons before it is made (save in cases of urgency as provided for by section 123(5) of the Act). There is provision for a further appeal, with permission, to the Court of Appeal (see section 6 of the Act).
16. Section 7 of the Act deals with the effect of an appeal on convictions for criminal offences. There is a right of appeal from the Magistrates’ Court to the Crown Court (or to the Court of Appeal (Criminal Division) where a person was convicted on indictment) – but only in respect of activities occurring after the date of the refusal by the Secretary of State of the application to deproscribe the organisation. Convictions relating to the period between the date of the making of the order adding the organisation to the list in Schedule 2 and the date of the refusal to deproscribe are unaffected and remain in existence. Section 7(1) of the Act describes the circumstances in which the right of appeal arises in the following terms:

“ 7.— Appeal: effect on conviction, &c.

(1) This section applies where—

(a) an appeal under section 5 has been allowed in respect of an organisation,

(b) an order has been made under section 3(3)(b) in respect of the organisation in accordance with an order of the Commission under section 5(4) (and, if the order was made

in reliance on section 123(5), a resolution has been passed by each House of Parliament under section 123(5)(b)),

(c) a person has been convicted of an offence in respect of the organisation under any of sections 11 to 13, 15 to 19 and 56, and

(d) the activity to which the charge referred took place on or after the date of the refusal to depose against which the appeal under section 5 was brought.”

THE FACTUAL BACKGROUND

Palestine Action

17. The material facts can be stated shortly. Ms Ammori is one of the founders of Palestine Action. She describes Palestine Action in her witness statement as “a national network created by a number of direct action groups and activists from across the UK”. She describes its aims as including the prevention of what it regards as serious violations of international law by Israel against the Palestinian people and exposing and targeting property and premises connected to such violations.
18. On 20 June 2025, two protestors linked to Palestine Action entered RAF Brize Norton and damaged two RAF aircraft.

The Decision to Proscribe Palestine Action

19. On 23 June 2025, the Home Secretary made a written ministerial statement in the House of Commons. She explained that she proposed to make an order adding Palestine Action to the list of proscribed organisations. In the statement, she described the attack on aircraft at Brize Norton as the latest in a long history of criminal damage by Palestine Action. The statement went on to record the Secretary of State’s views that Palestine Action had orchestrated a nationwide campaign of direct criminal action against businesses and institutions, including key national infrastructure and defence firms. The statement referred to other acts of damage said to have been caused by adherents to Palestine Action.

The issuing of the claim for judicial review and an application for interim relief

20. A claim for judicial review and supporting documents were sent to the court late on the evening of Friday 27 June 2025. The claim sought judicial review of the decision to add Palestine Action to the list of organisations in Schedule 2 to the Act, the decision to lay draft statutory instruments before each House of Parliament, and the decision to bring any statutory instrument approved by Parliament into law. Ms Ammori sought permission to advance eight grounds of challenge to the lawfulness of any order adding Palestine Action to the list of proscribed organisations on Schedule 2 to the Act. Ms Ammori also made an application for interim relief to restrain the Secretary of State from making the proscription order or, if made before the hearing, to suspend its effect.
21. The order was laid in draft before each House of Parliament on Monday 30 June 2025. The draft order would add Palestine Action (together with two other

unconnected organisations) to the list of proscribed organisations. The order was debated in, and affirmed by, each House (the House of Commons on 2 July 2025 and the House of Lords on 3 July 2025). The order was made at some time on 4 July and came into force 5 July 2025.

The refusal of interim relief

22. The application for interim relief was heard by the Judge on 4 July 2025 and he gave judgment the same day: see [2025] EWHC 1708 (Admin). He found that there was a serious issue to be tried in respect of at least one of the proposed grounds of claim, namely whether or not the order contravened section 6 of the Human Rights Act 1998 (“the 1998 Act”) as it was a disproportionate interference with the right to freedom of expression and assembly protected by Articles 10 and 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”). He considered that the balance of convenience favoured refusing interim relief. An application for permission to appeal to the Court of Appeal was heard on the evening of 4 July 2025. Following an oral hearing, judgment was given at approximately 10.20 p.m. refusing permission to appeal: see [2025] EWCA Civ 848. The order, therefore, came into force on 5 July 2025. We understand that a large number of persons have been arrested and charged with offences contrary to provisions in the Act since that date in connection with activities relating to Palestine Action.

The hearing of the application for permission to apply for judicial review

23. An oral hearing was held before the Judge on 21 July 2025 to consider the application for permission to apply for judicial review. There were eight grounds (some were subdivided). The Secretary of State also contended that, as a matter of discretion, the court ought to refuse permission as there was an adequate and convenient remedy available, other than judicial review, namely an application for deproscription, with a right of appeal against refusal to deproscribe. That issue was dealt with as a preliminary issue.
24. In relation to the preliminary issue, the Judge made the following observations on the statutory scheme:

“30. The following features of the statutory scheme should be noted at the outset:

(a) The decision whether to proscribe is legally distinct from the decision whether to grant an application to deproscribe. The former is taken under s. 3(3)(a), the latter under s. 3(3)
(b). Section 5(2) confers a right of appeal to POAC against the refusal of an application to deproscribe, not against the initial decision to proscribe.

(b) An application to deproscribe will often be made some considerable time after proscription, on the basis that events have moved on. The argument will typically be that, whatever the position at the time of proscription, the organisation is no longer “concerned in terrorism”. That was the basis for the appeals of the two organisations whose

cases have come before POAC to date: see *Lord Alton*, [2] and [14]; *Arumugam v Secretary of State for the Home Department* (PC/06/2002, 21 June 2024), [4]-[8].

(c) Although there is nothing to stop an organisation from applying for deproscription shortly after it is first proscribed, the initial decision to proscribe is temporally distinct from the decision to refuse an application to deproscribe. Once an application to deproscribe is made, the Secretary of State has 90 days in which to determine it. During this period, and then while any appeal to POAC is pending and unless and until a deproscription order is made, the organisation remains proscribed, with all the consequences I set out at [33]-[39] of my interim relief judgment.

(d) The statute does not purport to oust judicial review of decisions to proscribe. As I pointed out at the permission hearing, a contrast may be drawn in this respect with the Sanctions and Anti-Money Laundering Act 2018. That Act confers power to designate individuals. A designated individual can request variation or revocation of the decision to designate him or her. Section 38 creates a right of appeal against a range of decisions to refuse applications to de-designate, but not against decisions to designate in the first instance. Section 39(5) provides: "A decision mentioned in sub-paragraph (i), (ii) or (iii) of section 38(1)(d) [i.e. a decision to designate in the first instance] may not be questioned by way of proceedings for judicial review (and nor may a decision to which section 38 applies)". This is an example of the language Parliament uses where it intends that the only route of challenge to an initial decision is by way of appeal against the refusal of an application to vary or revoke it. There is nothing similar in the 2000 Act. Richards J made this point at [71] of his judgment in the *Kurdistan Workers' Party* case (drawing a contrast with another statutory ouster in the Anti-Terrorism, Crime and Security Act 2001).

31. These matters are not determinative of the alternative remedy submission (which, as Sir James submitted, goes to discretion rather than jurisdiction), but they are important in setting the context in which that submission falls to be considered."

25. The Judge next considered the "test to be applied in assessing whether an alternative remedy is adequate" and said:

"32. The authorities cited by Sir James make clear that the suitability of an alternative remedy depends on whether the remedy is "conveniently and effectively available": see *Watch Tower*, at [19]. The authorities make clear that the application

of this test depends not only on the statutory context, but also on the circumstances of the individual case. Sir James for the Home Secretary did not demur and indeed accepted that, in a case where the illegality of a proscription order was clear, judicial review may well be appropriate.

33. There are five factors that seem to me to be relevant. I consider them in turn, and cumulatively, before considering the impact of the judgment of Richards J in the *Kurdistan Workers' Party* case.”

26. The five factors identified by the Judge were these. The first was timing: a judicial review hearing could be heard relatively quickly and by the autumn of 2025. If an application for proscription were made, the Secretary of State would have up to 90 days to determine that application. Any appeal against a refusal would take time and would be unlikely to be heard until the middle of 2026.
27. Secondly, the Judge had regard to the detriment that would be suffered before a decision was reached if it was ultimately found that the decision to add Palestine Action to the list of organisations in Schedule 2 was unlawful. The detriment here would be the inhibitions on freedom of expression occurring during that period. Thirdly, the Judge considered the position in relation to criminal convictions. He referred to the fact that a successful appeal only had a prospective effect, that is, it only allowed an appeal against convictions relating to activity occurring on or after the date of the refusal of the application to deproscribe, as prescribed by section 7 of the Act. Further, he considered that it would be likely that a person charged with a criminal offence could raise, as a defence, the fact that the Order was unlawful and Palestine Action should not be treated as a proscribed organisation. He considered that “there was a strong public interest in allowing the legality of the order to be determined authoritatively as soon as possible. The obvious way to do that is in judicial review proceedings” (see [46]).
28. Fourthly, the Judge considered that the fact that POAC had a special constitution (being comprised of a judge, a lawyer, and a person expert in security matters) and that it could consider a wider range of material in closed proceedings was not sufficient to render an application to deproscribe and an appeal to POAC an adequate alternative remedy in the circumstances. Fifthly, the Judge did not consider that allowing judicial review rather than a deproscription would render the latter otiose or, as it was put, “a dead letter”. Many such applications would be based on arguments that, whatever the position in relation to the initial proscription, the organisation had now ceased to be involved in terrorism. Such cases would continue to be dealt with by means of an application to deproscribe the organisation. Finally, the Judge did not consider that the decision of Richards J. in the *Kurdistan Workers' Party* required him to reach a different decision. Aspects of Richards J’s reasoning were no longer apposite, notably the fact that there was now a procedure for dealing with closed material in judicial review proceedings.
29. The Judge’s conclusion was that:

“68. For these reasons, the preliminary issue is determined in the claimant's favour. An application to deproscribe, coupled

with an appeal to POAC if the application is refused, is not a suitable alternative remedy in the circumstances of this case. The existence of this remedy is therefore not a proper basis for refusing permission or relief in the exercise of the court's discretion, in circumstances where Parliament has not ousted the judicial review jurisdiction in respect of decisions to proscribe under s. 3(3)(a) of the 2000 Act.”

30. The Judge granted permission to apply for judicial review on two grounds, namely grounds 2 and 8. Ground 2 was a claim that the Order was unlawful as it was a disproportionate interference with the right to freedom of expression and assembly protected by Articles 10 and 11 of the Convention. Ground 8 was a claim that the Secretary of State should have consulted Palestine Action before making the Order and a failure to do so was a breach of natural justice and Article 6 of the Convention. Permission was refused on two grounds, grounds 3 and 4 (whether the Secretary of State had erred in concluding that Palestine Action intended to influence the UK government and whether she had failed to make adequate inquiries). Ms Ammori does not seek permission to appeal in relation to those two grounds and it is not necessary to say anything further about those grounds. The Judge also refused permission on grounds 1, 5, 6 and 7 which are considered further below.

The Judge's Order

31. The Judge made an order dated 6 August 2025 and sealed on 7 August 2025. Paragraph 1 of the order dealt with procedural matters. Paragraphs 2 to 4 are headed “Preliminary Issue” and provide:

“2. The Court determines as a preliminary issue that an application to the Defendant to deproscribe Palestine Action, coupled with an appeal to the Proscribed Organisation Appeal Commission, is not a suitable remedy.

3. The Defendant's application for permission to appeal on the preliminary issue is refused.

4. Any application by the Defendant for permission to appeal to the Court of Appeal on the preliminary issue is to be filed by 4 p.m. on 6 August 2025.”

32. Paragraphs 5 and 6 are headed “Permission and interim relief” and provide:

“5. The Claimant's application for permission to apply for judicial review is:

(a) refused on grounds 1,3, 4, 5, 6, 7 and

(b) granted on grounds 2 and 8.

6. The Claimant's renewed application for interim relief is refused.”

33. The remainder of the order dealt with other applications and directions.

The Secretary of State's appellant's notice.

34. By an appellant's notice submitted on 8 August 2025, the Secretary of State sought permission to appeal. Section 5 of the appellant's notice asks the appellant to "set out the order (or part of the order) you wish to appeal against". The Secretary of State referred to the attached grounds of appeal. From those, it is clear that the Secretary of State was seeking to appeal against paragraph 3 of the order of the Judge. Paragraph 1 of the grounds of appeal identified the grounds as (references to "J/" are references to paragraphs in the judgment of the judge):

"a. The Court diluted the test to be applied when determining whether an individual has an adequate alternative remedy to judicial review.

b. The Court erred in relying on the fact that judicial review would be more expeditious than an appeal to POAC [J/§§34-36].

c. The Court erred in relying upon "the detriment" the Respondent and others like her would incur would they to follow the process provided by Parliament [J/§§37-43].

d. The Court adopted a flawed analysis of the implications for those charged with criminal offences based upon the organisation's proscription and, in particular, erred in concluding that any person facing criminal proceedings for a proscription offence can mount a defence to the prosecution on the basis that the Applicant's order for proscription was unlawful [J/§§44-49].

e. The Court erred in its analysis of the differences between POAC and the High Court when relying upon 'forum and procedure' [J/§§50-59].

f. The Court wrongly rejected the Applicant's submission that the availability of judicial review would render the deproscription / POAC route a dead letter [J/§§60-62].

g. The Judge failed to follow *R (Kurdistan Workers' Party) v Secretary of State for the Home Department* [2002] EWHC 644 (Admin), in which Richards J concluded that an appeal to POAC was a suitable alternative remedy to judicial review [J/§§63-67]."

35. Permission to appeal was granted by Underhill LJ by order dated 21 August 2025. The appeal was heard a month later on 25 September 2025.

Ms Ammori's respondent's notice

36. Ms Ammori filed a respondent's notice on 3 September 2025. Section 4 identified the part of the order that she sought to appeal as paragraphs 2 (dealing with the preliminary issue) and paragraph 5 (dealing with the refusal of permission to apply for

judicial review on grounds 1,3,4 5, 6, and 7 and granting permission on grounds 2 and 8). In section 6, the respondent's notice says "In respect of paragraph 2 of the Order", Ms Ammori was seeking to uphold that paragraph on certain additional grounds. It goes on to say that "In respect of paragraph 5(a) of the Order", Ms Ammori sought permission to appeal paragraph 5(a) of the order in respect of grounds 1, 5, 6 and 7.

THE ISSUES

37. Against that background, the following issues arise:

- (1) Was the Judge wrong to conclude that an application to the Secretary of State to remove Palestine Action (i.e. an application to deproscribe under section 4) with an appeal to POAC if that application was refused, was not an adequate alternative remedy to judicial review?
- (2) Was Ms Ammori required to make any application for permission to appeal against the refusal of permission to apply for judicial review on grounds 1, 5, 6 and 7 within 7 days of the refusal of permission by the High Court in accordance with CPR 52.8?
- (3) If so, is it appropriate to extend time for Ms Ammori to apply for permission?
- (4) If so, should permission to appeal (or permission to apply for judicial review) be granted in relation to any or all of grounds 1, 5, 6 and 7 of the claim form as amended?

THE FIRST ISSUE – ADEQUATE ALTERNATIVE REMEDIES

Submissions

38. Sir James Eadie KC, who dealt with this issue on behalf of the Secretary of State, accepted that the Administrative Court had jurisdiction to hear a claim for judicial review of a decision or order adding an organisation to the list of proscribed organisations in Schedule 2 to the Act. He submitted that judicial review was a remedy of last resort and permission to apply for judicial review would not be granted where a claimant had an adequate alternative remedy, relying on a series of decisions including most relevantly *R (Sivasubramaniam) v Wandsworth County Court* [2002] EWCA Civ 1738; [2003] 1 WLR; *R (Watch Tower Bible & Tract Society of Britain) v Charity Commissioners* [2016] EWCA Civ 154; [2016] 1 WLR 2625; *R (Glencore Energy UK Ltd) v HMRC* [2017] EWCA Civ 1716; [2017] 4 WLR 213 and *Re McAleenon's Application for Judicial Review* [2024] UKSC 31; [2024] 3 WLR 803.
39. Sir James submitted that where Parliament had provided a particular statutory procedure to deal with certain categories of cases, that procedure and not judicial review should generally be used. There would need to be exceptional circumstances justifying the use of judicial review rather than the procedure prescribed by Parliament. Sir James submitted that the process of making an application to the Secretary of State to deproscribe an organisation with a right of appeal to POAC was intended by Parliament to be the means of challenging the continuing proscription of an organisation on the list of proscribed organisations. Parliament intended the matter to be considered first by the Secretary of State and then, if necessary, by way of

appeal to POAC. That was a carefully constructed and calibrated scheme. The scheme recognised the role of the Secretary of State. It provided for an appeal to a specialist and expert body in the form of POAC, which could consider a wider range of closed material than the Administrative Court could. It recognised the role of Parliament as each House of Parliament had to approve a draft order before an order could be made. POAC could consider all the matters which were the subject of challenge, whether they raised matters of public law or compliance with section 6 of the HRA and Convention rights.

40. Sir James submitted that the fact that proceedings for judicial review may be quicker than an application to deproscribe, with a right of appeal, was a feature of the legislative scheme and did not justify departing from it. In terms of detriment, it was correct that criminal convictions could only be the subject of appeal in respect of activity occurring on or after the date of the refusal of the application to deproscribe. That, however, was a feature of the legislative scheme. Parliament had provided that persons who engaged in certain activities after an organisation had been proscribed (and before a refusal to deproscribe) should be guilty of criminal offences even if the organisation was subsequently deproscribed.
41. Mr Husain KC, who dealt with this issue for Ms Ammori, submitted that the Judge was correct to conclude that an application to deproscribe, coupled with a right of appeal to POAC, was not a convenient and effective means of challenging an initial decision to proscribe an organisation. He submitted that the statutory process was not adequate to ensure respect for the rule of law, relying on observations in *R (Cart) v Upper Tribunal (Public Law Project intervening)* [2011] UKSC 28; [2012] 1 AC 663.

Discussion

The Scope of the Alternative Remedies Principle

42. The decision or measure under challenge in the present case is the Order made by the Secretary of State in the exercise of the power conferred by section 3(3)(a) of the Act to “add an organisation to Schedule 2”. It is said that that exercise of power was unlawful in public law terms as it involved breaches of the recognised principles of public law governing the exercise of statutory power or was contrary to section 6 of the HRA as it was incompatible with certain Convention Rights. The remedy sought is a quashing order to quash, or set aside, the Order.
43. A claim for judicial review in the Administrative Court is available to ensure that public bodies act in accordance with relevant principles of public law or the HRA. The Secretary of State does not submit that the jurisdiction of the Administrative Court to entertain claims for judicial review of orders made pursuant to section 3(3) of the Act had been removed or ousted in any way. Indeed, the Secretary of State accepts that, in an appropriate case, judicial review of such an order would be available.
44. A court may in its discretion refuse to grant permission to apply for judicial review, or may refuse a remedy at a substantive hearing, if an adequate alternative remedy exists but the claimant has failed to use it. The courts have developed a general principle that an individual should normally use alternative remedies where these are available rather than judicial review. The principle applies where Parliament has provided for a statutory procedure for dealing with challenges to particular categories of decisions.

In such cases, the individual will be expected to use the statutory procedure unless there are exceptional circumstances justifying the use of judicial review. The courts may take the same approach where there are other methods available which are adequate, or equally convenient and effective means of challenging a particular decision.

45. The principle has been consistently recognised by the courts over many years. Sir John Donaldson MR observed in 1983 that “the judicial review jurisdiction will not be exercised where other remedies were available and have not been used” (see *R v Epping and Harlow General Commissioners ex p. Goldstraw* [1983] 3 All ER 257 at 262). More recently, Lord Dyson MR expressed the principle in the following way in the *Watch Tower* case:

“19. These principles are not in dispute and can be summarised briefly. If other means of redress are “conveniently and effectively” available to a party, they ought ordinarily to be used before resort to judicial review: per Lord Bingham of Cornhill in *Kay v Lambeth London Borough Council* [2006] 2 AC 465, para 30. It is only in a most exceptional case that a court will entertain an application for judicial review if other means of redress are conveniently and effectively available. This principle applies with particular force where Parliament has enacted a statutory scheme that enables persons against whom decisions are made and actions taken to refer the matter to a specialist tribunal (such as the First-tier Tribunal (General Regulatory Chamber) (Charity)). To allow a claim for judicial review to proceed in circumstances where there is a statutory procedure for contesting the decision risks undermining the will of Parliament...”

46. The scope and application of that principle was considered by the Court of Appeal in *Glencore*. The case concerned the provisions for levying a tax called diverted profits tax. The legislation introducing the tax made detailed provision for the procedures to be followed when HMRC was considering whether to make a charge for diverted profits tax. That included provision for issuing a preliminary notice and representations and a decision on whether to issue a charging notice. The taxpayer had to pay the tax within 30 days. He could however seek a review, and the taxpayer had 30 days from the end of the review period to appeal to the First-tier Tribunal (see [1]). The taxpayer sought judicial review contending that an appeal to the First-tier Tribunal was not an adequate and effective remedy as the taxpayer had to pay the tax after the notice was served, and would be out of the money for the period of the review and whilst any appeal was pending. Sales LJ, with whom Singh and Gloster LJ agreed, analysed the operation of the principle in the following terms:

“54. In order to evaluate these submissions, it is necessary to consider the basis for the suitable alternative remedy principle. The principle does not apply as the result of any statutory provision to oust the jurisdiction of the High Court on judicial review. In this case the High Court (and hence this court) has full jurisdiction to review the lawfulness of action by the Designated Officer and by HMRC. The question is whether the

court should exercise its discretion to refuse to proceed to judicial review (as the judge did at the permission stage) or to grant relief under judicial review at a substantive hearing according to the established principle governing the exercise of its discretion where there is a suitable alternative remedy.

55. In my view, the principle is based on the fact that judicial review in the High Court is ordinarily a remedy of last resort, to ensure that the rule of law is respected where no other procedure is suitable to achieve that objective. However, since it is a matter of discretion for the court, where it is clear that a public authority is acting in defiance of the rule of law the High Court will be prepared to exercise its jurisdiction then and there without waiting for some other remedial process to take its course. Also, in considering what should be taken to qualify as a suitable alternative remedy, the court should have regard to the provision which Parliament has made to cater for the usual sort of case in terms of the procedures and remedies which have been established to deal with it. If Parliament has made it clear by its legislation that a particular sort of procedure or remedy is in its view appropriate to deal with a standard case, the court should be slow to conclude in its discretion that the public interest is so pressing that it ought to intervene to exercise its judicial review function along with or instead of that statutory procedure. But of course it is possible that instances of unlawfulness will arise which are not of that standard description, in which case the availability of such a statutory procedure will be less significant as a factor.

56. Treating judicial review in ordinary circumstances as a remedy of last resort fulfils a number of objectives. It ensures the courts give priority to statutory procedures as laid down by Parliament, respecting Parliament's judgment about what procedures are appropriate for particular contexts. It avoids expensive duplication of the effort which may be required if two sets of procedures are followed in relation to the same underlying subject matter. It minimises the potential for judicial review to be used to disrupt the smooth operation of statutory procedures which may be adequate to meet the justice of the case. It promotes proportionate allocation of judicial resources for dispute resolution and saves the High Court from undue pressure of work so that it remains available to provide speedy relief in other judicial review cases in fulfilment of its role as protector of the rule of law, where its intervention really is required.

57. In my judgment the principle is applicable in the present tax context. The basic object of the tax regime is to ensure that tax is properly collected when it is due and the taxpayer is not otherwise obliged to pay sums to the state. The regime for

appeals on the merits in tax cases is directed to securing that basic objective and is more effective than judicial review to do so: it ensures that a taxpayer is only ultimately liable to pay tax if the law says so, not because HMRC consider that it should. To allow judicial review to intrude alongside the appeal regime risks disrupting the smooth collection of tax and the efficient functioning of the appeal procedures in a way which is not warranted by the need to protect the fundamental interests of the taxpayer. Those interests are ordinarily sufficiently and appropriately protected by the appeal regime. Since the basic objective of the tax regime is the proper collection of tax which is due, which is directly served by application of the law to the facts on an appeal once the tax collection process has been initiated, the lawfulness of the approach adopted by HMRC when taking the decision to initiate the process is not of central concern. Moreover, by legislating for a full right of appeal on fact and law, Parliament contemplated that there will be cases where there might have been some error of law by HMRC at the initiation stage but also contemplates that the appropriate way to deal with that sort of problem will be by way of appeal.

58. For reasons of this kind it has long been established at the highest level that “Where Parliament has provided by statute appeal procedures, as in the taxing statutes, it will only be very rarely that the courts will allow the collateral process of judicial review to be used to attack an appealable decision”: *In re Preston* [1985] 1 AC 835, 852D per Lord Scarman; see also p. 852F (“I accept that the court cannot *in the absence of special circumstances* decide by way of judicial review to be unfair that which the commissioners by taking action against the taxpayer have determined to be fair” [emphasis in original]); and p. 862B-F per Lord Templeman, with whom the other members of the appellate committee agreed (“Judicial review process should not be allowed to supplant the normal statutory appeal procedure”; unless the circumstances are exceptional and involve an abuse of power of a serious character, as explained at pp. 864F-H and 866G-867C). In that case, the allegation was that the Inland Revenue Commissioners had made a promise not to collect tax in certain circumstances (i.e. had created what would today be called a legitimate expectation not to collect an amount of tax), and although the allegation was not made out the House of Lords was prepared to accept that such a claim could be made by way of judicial review. In fact, the tax appeal process would have been incapable of dealing with such a claim of unlawfulness on the part of the commissioners, which did not go to the merits of whether the criteria for imposition of tax were or were not met (a subject fit for examination on appeal) but rather to enforcement of fundamental rule of law standards against the

commissioners if they had in fact made a promise not to initiate the tax collection process in the first place.

59. In my view, *Preston* provides relevant guidance in the present case. Apart from the review procedure under section 101 FA 2015, the statutory context here is a typical one of assessment by the HMRC of a taxpayer to tax with the taxpayer having a right of appeal against that assessment on the merits. There is nothing exceptional about the nature of the objections which GENUK has raised in relation to the Charging Notice.”

47. In other words, that case involved a situation where Parliament had specifically provided that a particular procedure (review and appeal) be used to challenge notices of liability to a particular tax, and provided that the tax would be payable pending the outcome of that procedure. Unless there were exceptional circumstances to differentiate the particular case from those which were intended by Parliament to be dealt with using the statutory procedure, judicial review would not be appropriate.

48. That understanding of the scope of principle and the case law is reflected at [51] of the decision of the Supreme Court in *Re McAleenon* where Lord Sales and Lord Stephens, with whom the other members of the Court agreed, said:

“51. Where Parliament has enacted a statutory scheme for appeals in respect of certain decisions, an appeal will in ordinary circumstances be regarded as a suitable alternative remedy in relation to such decisions which ought to be pursued rather than having resort to judicial review: *Glencore Energy*, above, paras 55–58; *Watch Tower Bible & Tract Society*, above, para 19. Otherwise, use of judicial review would undermine the regime for challenging decisions which Parliament considers to be appropriate in that class of case.”

49. A similar approach can be seen in the decision of the Supreme Court in *The Father v Worcester County Council* [2025] UKSC 1; [2025] 2 WLR 155 where Lord Sales said:

“82. However, it is well established that judicial review will only be granted if there is no suitable alternative remedy: *Sharma v Brown-Antoine*, para 14; *In re McAleenon* [2024] 3 WLR 803, paras 50–64. Where there is a statutory right of appeal in respect of an order, that is regarded as a suitable alternative remedy (save in exceptional circumstances) and will operate as a defence to a claim in judicial review to challenge the order in issue: *McAleenon*, para 51; *R (Watch Tower Bible & Tract Society of Britain) v Charity Commission* [2016] 1 WLR 2625, para 19 and *R (Glencore Energy UK Ltd) v Revenue and Customs Comrs* [2017] 4 WLR 213, paras 55–58. Therefore, if the individual wishes to challenge the detention order in circumstances where there is a right of appeal, they are obliged to do so by way of appeal and are precluded from doing so by judicial review. Although not usually described as such,

the suitable alternative remedy rule is a form of abuse of process doctrine. It means that the judicial review procedure cannot be used inappropriately, ie where there is another suitable remedy available.”

The Present Case

50. The first question is whether an application under section 4 of the Act to remove an organisation from the list in Schedule 2, coupled with the right of appeal to POAC under section 5 if the application is refused, was intended by Parliament to be the means of challenging the lawfulness of the exercise of the power provided by section 3(3)(a) to make an Order adding an organisation to the list in Schedule 2. That is a question of statutory interpretation, which requires consideration of the words used, read in context, and having regard to the underlying purpose of the statute and any legitimate aids to interpretation: see the authoritative observations of Lord Hodge in *R (O) v Secretary of State for the Home Department* [2022] UKSC 3; [2022] AC 255 at [29] to [31]. It involves an objective assessment of the meaning which a reasonable legislature as a body would be seeking to convey in using the statutory words which are being considered. As Lord Nicholls stated in *R v Secretary of State for the Environment, Transport and the Regions, Ex p Spath Holme Ltd* [2001] AC 349 at 396:

“...The task of the court is often said to be to ascertain the intention of Parliament expressed in the language under consideration. This is correct and may be helpful, so long as it is remembered that the "intention of Parliament" is an objective concept, not subjective. The phrase is a shorthand reference to the intention which the court reasonably imputes to Parliament in respect of the language used. It is not the subjective intention of the minister or other persons who promoted the legislation. Nor is it the subjective intention of the draftsman, or of individual members or even of a majority of individual members of either House. These individuals will often have widely varying intentions. Their understanding of the legislation and the words used may be impressively complete or woefully inadequate. Thus, when courts say that such-and-such a meaning "cannot be what Parliament intended", they are saying only that the words under consideration cannot reasonably be taken as used by Parliament with that meaning.”

51. For the reasons set out below, we consider that sections 4 and 5 are intended to enable a person to challenge the continued proscription of an organisation and to bring that proscription to an end. They are not, and are not intended as, a means of challenging the lawfulness of the initial decision to proscribe the organisation.
52. First, the provisions of the Act specifically distinguish between different decisions. Section 3(3)(a) of the Act confers a power to “add an organisation to Schedule 2”. Section 3(3)(b) provides a power to “remove an organisation from that Schedule”. An application under section 4(1) is expressed to be an application for an order “removing an organisation from that list” (i.e. an application requesting the exercise of the power conferred by section 3(3)(b) of the Act). Similarly, section 5 deals with

the powers of POAC to “allow an appeal against a refusal to deproscribe an organisation”. As the Judge observed at [30], the “decision whether to proscribe is legally distinct from the decision whether to grant an application to deproscribe”.

53. Secondly, and most significantly, the process for deproscribing is not intended to remove the consequences of an initial, unlawful decision to proscribe an organisation. Section 7 of the Act makes it clear that there will be a right of appeal against a criminal conviction in respect of action occurring on or after a refusal to deproscribe (where POAC subsequently allows an appeal and Parliament approves a draft order providing for the removal of the organisation). It does not provide for the removal of the consequences, including criminal convictions, where the Order was unlawful from its inception. That is a strong indicator that the process for deproscribing was not intended as a means to remedy any of the consequences of an unlawful initial proscription.
54. Sir James submitted that the fact that persons would have been convicted of offences for actions occurring prior to a refusal of an application for deproscription was the result of a deliberate decision by Parliament. Those who engaged in action prohibited as a result of an order would be liable to conviction until the period when an application was refused but should have been granted.
55. We do not accept that, objectively construed, Parliament can be taken to have intended that persons should have criminal convictions recorded against them in such circumstances. The premise here is that an order was made adding an organisation to the list of proscribed organisations in Schedule 2 to the Act. As a result of that order, it became a criminal offence to be a member of, or support, or arrange funding for that organisation because it was a proscribed organisation. If the order was unlawful, the organisation should not have been proscribed (and, on judicial review, the order could be quashed and would be treated as never having produced legal effect). That would have the consequence that membership or support for that organisation would not be criminal. It is difficult to see why, if Parliament intended deproscription to be a means of challenging an initial decision to proscribe, it would leave in place the consequences of that initial (unlawful) order up to the date when the application for deproscription should have been granted, and only to remove the consequences of an unlawful initial decision to proscribe the organisation from that later date.
56. In our judgment, the process of applying for deproscription, and an appeal against a refusal, is intended to deal with another situation. It is most obviously, though not exclusively, a means of bringing proscription to an end when circumstances have changed. An organisation may well have been an appropriate candidate for inclusion in the list of proscribed organisations at the time when the order adding it to the list of such organisations was made. However, circumstances may change, and the organisation may cease at some stage to be involved in terrorism. That explains why an organisation or an affected person may wish to apply for an order removing the organisation from the list of proscribed organisations. That explains why convictions may only be challenged in respect of the period on and after the date at which it should have been recognised that the organisation should no longer be proscribed. It may be that an applicant may advance the fact that the organisation should not have been proscribed in the first place as a ground for deproscription. The application is, however, for an order removing the organisation from the list. It is not an application challenging the order adding the organisation to the list. Put simply, the process in

section 4 and 5 is concerned with whether an organisation should continue to be proscribed. It is not intended to be a means of challenging the initial decision to proscribe and does not provide for the removal of the consequences of an initial decision to proscribe an organisation.

57. Accordingly, this is not a case where Parliament has established a statutory procedure for challenging an order adding an organisation to the list of proscribed organisations. For these reasons, which are reflected in the Judge's observations on the features of the statutory scheme at [30] of his judgment, an application for deproscription is not an alternative remedy to judicial review of a decision to proscribe.
58. If we are wrong about that, we have considered whether the Judge was correct to conclude that the availability of an application to deproscribe, and an appeal against refusal, was not an adequate alternative remedy in this particular case. On this basis, the application to deproscribe, with the right of appeal against a refusal, is to be treated as an available alternative remedy, and the question is whether the Judge was entitled to find that it was not an adequate alternative remedy in the circumstances of this case.
59. We consider that, on the facts of this case, the Judge was entitled to conclude that that remedy was not adequate in the circumstances. We consider that the fact that judicial review would be a more expeditious means of challenging the order, given the public importance of the issues raised, and, in particular, the fact that persons were facing convictions for acting in ways made criminal as a consequence of the Order, justified using judicial review rather than the process of applying for an order to remove Palestine Action from the list of proscribed organisations. That is particularly the case as, we are told, a number of persons have been charged and face criminal convictions for actions taken in support of Palestine Action. There is merit in ensuring that there is a swift method of authoritatively determining whether the Order, and the proscription of Palestine Action, was lawful or unlawful. The Judge was entitled to conclude for those reasons that judicial review would, exceptionally, be appropriate even if an application for deproscription, with a right of appeal to POAC if the application were refused, was intended to be a means of challenging the making of an order. Furthermore, the Judge was entitled to form the view that he did that the advantages of the different constitution of POAC and its (slightly) wider powers to consider closed material did not outweigh that consideration. Nor would the judgment render sections 4 and 5 otiose or a "dead letter". As a minimum, that process would be used where it was contended that a proscribed organisation had ceased to be involved in terrorism and should be desproscribed.
60. There are two further matters upon which we would make certain observations. First, the third of the five factors which the Judge considered were relevant in deciding how he should exercise his discretion in assessing the suggested availability of an alternative remedy was described as "criminal cases". The Judge said:-

"44. It is a premise of the Home Secretary's "alternative remedy" argument that there are two routes by which the proscription can be challenged: (i) judicial review or (ii) application for deproscription followed by appeal to POAC. This leaves out of account a third possible route. Those charged with criminal offences under the 2000 Act in respect of alleged

support for PA may seek to challenge the validity of the proscription order by way of defence to their criminal proceedings. On the face of it, since the order is secondary legislation, it seems likely that they would be entitled to do so, applying the principles set out by the House of Lords in *Boddington v British Transport Police* [1999] 2 AC 143.

“45. As a matter of principle, it seems likely that the defence could include the incompatibility of the order with Articles 10 and 11 ECHR: see e.g. *RR v Secretary of State for Work and Pensions* [2019] UKSC 52, [2019] 1 WLR 6430. Sir James would not be drawn on whether such a defence would be open to defendants in criminal proceedings, but suggested no plausible reason why not.”

61. In his oral submissions Sir James developed the Secretary of State’s position beyond the way it had appeared to the Judge. He sought to argue that the rule in *Boddington* does not enable a challenge to a decision made under powers conferred in primary legislation where that decision results in an amendment to primary legislation which creates the relevant offence. In this case the consequence of the exercise of the power is to amend Schedule 2, which is primary legislation. The Secretary of State, therefore, does now seek to suggest a “plausible reason” why the suggested unlawfulness of the proscription order is not a defence to criminal proceedings. She submits that it would not be open to the defendants and criticises the judge’s suggestion that it might be as “very obviously wrong”.
62. *Boddington* did indeed concern a byelaw, but it also concerned an administrative decision. That decision was a decision to post notices throughout all the trains operated on the railway so that they gave rise to a complete ban on smoking. The byelaw only created a criminal offence (so far as relevant) where such notices had been posted, and the defendant smoked nonetheless.
63. Lord Irvine LC records the dispute at 151F in this way:

“It is not suggested that byelaw 20 was itself ultra vires the powers which the primary legislation conferred upon the British Railways Board. Objection is, however, made to the administrative decision by which no smoking notices came to be displayed on the trains.”
64. Lord Irvine explained the scope of Mr Boddington’s defence at pages 151G-152C. Mr Boddington submitted that the decision to post notices in all train carriages, thereby prohibiting smoking, exceeded the powers conferred by the relevant statute. That conferred a power to regulate the use of the railways and the complete prohibition on smoking went beyond permissible regulation. He submitted that the unlawfulness of the decision to post the notices had the effect of nullifying it so that the byelaw had not been properly brought into operation. That, he said, gave him a defence to the offence with which he was charged. Lord Irvine, however, considered that the defence raised “the question of the extent to which a defendant to a criminal charge may defend himself by pointing to the unlawfulness of subordinate legislation, or an administrative act made under that legislation, the breach of which is alleged to

constitute his offence”. All members of the House of Lords considered that the notice was valid as the power to regulate the use of railways permitted the train operator to prohibit smoking. Their Lordships also considered that as a matter of general principle a defendant could raise the validity of subordinate legislation or an administrative act as a defence, subject to consideration of the particular statutory context to determine whether Parliament had legislated to preclude such challenges being made (see per Lord Irvine at 160B-D, per Lord Browne-Wilkinson at 164D-E, per Lord Slynn at 164E-G, Lord Steyn at 173F-H, Lord Hoffman agreed with the speeches of Lord Irvine and Lord Steyn).

65. Turning to the distinction advanced by Sir James, there is a difference between primary and secondary legislation in that the court cannot entertain a challenge to the validity of the former (as opposed to a challenge to its suggested meaning or its compatibility with the Convention). However, in this case there is no challenge to the provisions of the Act. The difference relied upon by Sir James is not therefore a relevant difference. The challenge here is to the decision made by the Secretary of State to make secondary legislation, namely the Order, following the affirmative resolution procedure. The fact that the effect of this secondary legislation was to amend primary legislation does not mean that the decision is immune from challenge by judicial review. It is not suggested that it does. The Secretary of State has still not therefore identified a plausible reason why a defence could not be advanced in the criminal courts based on the suggested unlawfulness of her decision-making.
66. It is not necessary for us in this case to determine whether the approach in *Boddington* would enable challenges to subordinate legislation of the present kind in criminal proceedings. The arguments here will concern the question of whether the Order was a disproportionate interference with the rights guaranteed by Article 10 and 11 of the Convention or involved a failure to consult prior to making the Order. That may require extensive evidence. We heard argument about the importance of the different approaches to closed material in POAC and in the Administrative Court in judicial review cases. What is clear is that the criminal court cannot, in reaching a decision, rely on material which is not disclosed to a defendant and, generally, the public. *Boddington* is silent on this factor. We do not need to determine whether such factors are sufficient to distinguish this case from the situation in *Boddington*. If public law challenges to the Secretary of State’s decision are raised, the courts where they arise will have to decide how to deal with them. We have not heard full argument about the reach of the *Boddington* principle in this situation and it would be wrong for us to rule on the issue.
67. As we have said, however, the Judge was entitled to give weight to the impact of these issues on criminal proceedings as a relevant factor. Whatever may be the right approach to their determination in criminal cases, it is clearly preferable that the lawfulness or otherwise of the Secretary of State’s decision should be determined in proceedings which can be conducted expeditiously and which are well-suited to the task. Whatever the outcome, a ruling by the Administrative Court will, as a minimum, lend clarity to the criminal proceedings. If the Order is quashed, the criminal proceedings will end. If not, it is likely to be difficult to argue in the criminal courts that the Order was unlawful. Whether a finding of lawfulness in the Administrative Court would be strictly binding on the question or not, the criminal courts will attach considerable weight to it. This is why the Judge said:-

“46. If the legality of the proscription order can properly be raised by way of defence to criminal proceedings, that would open up the spectre of different and possibly conflicting decisions on that issue in Magistrates’ Courts across England and Wales or before different judges or juries in the Crown Court. That would be a recipe for chaos. To avoid it, there is a strong public interest in allowing the legality of the order to be determined authoritatively as soon as possible. The obvious way to do that is in judicial review proceedings.”

68. The Secretary of State in her written submissions to this court said:-

“44. Accordingly, not only was the lower court’s approach here very obviously wrong – and on the issue which is pivotal to the rationale of its conclusion - but it also creates the very ‘recipe for chaos’ it purports to guard against: first, it stands as High Court authority for the proposition that there can be a *Boddington* defence to any criminal prosecution for a proscription offence; and secondly, it adds to that ‘chaos’ by providing for two tribunals (the High Court and POAC) which are both said to be capable of finally resolving the question in issue here, namely the lawfulness of the organisation’s proscription. (There is nothing to prevent any person affected by Palestine Action’s proscription from applying for its deproscription at any time during this judicial review.)”

69. We would make the following observations about the suggested consequences of the Judge’s approach. The Judge’s decision does not “stand as High Court authority for the proposition that there can be a *Boddington* defence to any criminal prosecution for a proscription offence”. He said only that “[o]n the face of it, since the order is secondary legislation, it seems likely that they would be entitled” to raise such a defence. That cannot be characterised as a finding that, in law, it is capable of being raised as a defence. His approach was the same as ours above, namely to say that, whether there is merit in the defence or not, it is likely that it will be advanced in multiple cases and in multiple criminal courts, and perhaps in multiple different ways. That will create “chaos” which can be avoided by an early and authoritative decision about the lawfulness of the Order. Nor is it clear how the Secretary of State proposes to avoid the situation described by the Judge if her preferred course for the resolution of the lawfulness of her decision is followed. As we have explained, the Secretary of State has not, in our judgment, identified any basis for concluding that a defence may not be raised, following the approach in *Boddington* where the lawfulness of a decision has not been authoritatively decided. The criminal court will have to consider the evidence and legal submissions and determine whether any defence is made out. We do not know what, if any, closed material was relied upon by the Secretary of State in making the deproscription decision. If there was any, this may give rise to a difficult issue for the criminal courts to resolve, for the reasons explained above. Its resolution may delay proceedings and produce different outcomes in different courts. We consider that the criticism of the use made by the Judge of the possibility of defences being raised in criminal courts, relying on the approach in *Boddington*, was not made out.

70. The second issue concerns the decision of Richards J. in the *Kurdish Workers' Party* case. There, Richards J. refused permission to apply for judicial review of decisions adding certain organisations, including the Kurdish Workers' Party, to Schedule 2. The decision is not binding on us as it is a decision on permission (albeit one that was fully argued) and is a decision of the High Court. Nonetheless, the reasoning deserves consideration.
71. In each case, the organisation (or an individual) applied for judicial review of the order adding it to the list of proscribed organisations. Richards J. considered it "plain that Parliament, although not seeking to exclude the possibility of judicial review, intended POAC to be the forum of first resort for the determination of claims relating to the lawfulness of proscription" (see [75]). For the reasons given above, we disagree with that analysis of the provisions of the Act. We consider that a different conclusion is to be drawn from the wording of the Act. We note, in particular, that Richards J. did not at this stage of his judgment consider the inferences to be drawn from section 7 of the Act.
72. Richards J. gave a number of reasons why he considered that an application for deproscription, with an appeal to POAC if the application was refused, was intended as a means of challenging the initial decision. First, he referred to the fact that POAC was a specialist tribunal designed to deal with proscription claims in a context heavily laden with national security. Like the Judge we consider that matters have moved on since the judgment of Richards J. In particular, there is now a closed material procedure which enables the Administrative Court to deal with national security issues. We do not consider that the constitution of POAC, nor the limited circumstances where POAC may receive closed material but the Administrative Court would not, justify treating an application for deproscription, coupled with a right of appeal, as an available remedy for challenging the lawfulness of the initial decision to add an organisation to the list of proscribed organisations. Nor, if it were an available remedy, do those factors outweigh the other factors which render it justifiable to seek judicial review in the present case.
73. Next Richards J. referred to the fact that POAC has been designated as the appropriate tribunal for the purposes of section 7 of the HRA in respect of a refusal to deproscribe. That factor is at best neutral. An applicant cannot challenge the decision to proscribe in POAC (and POAC is not designated as the appropriate tribunal for challenges to such decisions). At most, an applicant can apply for an organisation's name to be removed from the list of proscribed organisations and can seek to rely, in its grounds for doing so, on the fact that the organisation should not have been proscribed in the first place. If those grounds are raised, POAC could deal with them. That fact, however, says little, if anything, about whether an application to deproscribe, coupled with an appeal against a refusal, is an available, or an adequate, remedy for challenging a decision or Order adding an organisation to the list of proscribed organisations.
74. Having concluded that an application to deproscribe was an available remedy, Richards J. considered whether it would be adequate in the circumstances of the case. In that regard, it is important to note that Richards J. did refer in this context to the difference in remedies available in the Administrative Court and POAC. In particular he noted that POAC did not have any power to quash the initial Order proscribing an organisation. He noted that that meant that the proscription of the organisation

remained valid until the date of an order removing the organisation from the list of proscribed organisations (or the date when an application was refused where POAC considered that it should not have been refused). He considered that might be relevant if any of the claimants in that case were subject to sanctions dependent on the validity of the proscription in the interim period. He did not think, however, that this difference “would have any practical consequence for the claimants”. We doubt that Richards J. was indicating that it did not matter that persons might be convicted of an offence on the basis of an order which, it subsequently transpired, was unlawful. If he were, we would respectfully disagree with him. Rather we think it likely that, on the facts of that case, there was nothing to indicate that convictions were in prospect. In the present case, we consider that the wording of section 5 and the limitations in section 7 of the Act are a strong indicator that the procedure for applying to deproscribe an organisation was a means of bringing proscription to an end not a means of challenging the validity of the initial proscription. In any event, in this case it is likely that many persons were charged with offences during the period between the making of the Order and the date of any deproscription (or unlawful refusal to deproscribe). That is one factor indicating that, in any event, judicial review would exceptionally be appropriate here for the reasons given above.

Conclusion

75. For those reasons none of the grounds of appeal are made out. We therefore dismiss the appeal against the decision of the Judge on the preliminary issue.

THE SECOND ISSUE – THE TIME LIMITS FOR APPLYING FOR PERMISSION TO APPEAL

76. The second issue concerns the fact that Ms Ammori wishes to appeal against the refusal by the Judge of permission to apply for judicial review on grounds 1, 5, 6 and 7 of the amended statement of facts and grounds of claim. The question is whether any application for permission to appeal against the refusal of permission to apply for judicial review had to be made within seven days of the Judge’s decision in accordance with CPR 52.8 or whether it could be made by including the application for permission in a respondent’s notice filed in accordance with the time limits in CPR 52.13.
77. Mr Husain submitted that Ms Ammori is a respondent in this case. He submitted that CPR 52.13 governs applications for permission to appeal by a respondent. CPR 52.13(2(a) provides that “where the respondent needs permission from the appeal court it must be requested in the respondent’s notice”. The time limits are governed by CPR 52.12(4) and (5). Subject to any direction made by the court, the time for filing a respondent’s notice is 14 days after one of the specified events. That rule was not subject to CPR 52.8.
78. Sir James submitted that Ms Ammori is, or is to be treated as, an appellant for the purposes of her application for permission to appeal. Any application had to be made in accordance with the time limit in CPR 52.8.

Discussion

79. The starting point is the wording and structure of CPR 52. It is divided into seven parts. The material parts, for present purposes are parts 1 to 4. Part 1 is headed “1. Scope and Interpretation”. CPR 52.1(3) defines an appellant and a respondent in the following way:
- “(d) ‘appellant’ means a person who brings or seeks to bring an appeal;
- (e) ‘respondent’ means –
- (i) a person other than the appellant who was a party to the proceedings in the lower court and who is affected by the appeal; and
- (ii) a person who is permitted by the appeal court to be a party to the appeal;”
80. CPR 52.1(3) also defines an appeal notice and says it “means an appellant’s notice or respondent’s notice”.
81. Part 2 of CPR 52 is headed “II. Permission to Appeal – General”. CPR 52.3(1) provides that “An appellant or respondent requires permission to appeal”.
82. Part 3 of the CPR deals with four specific types of appeal. It is headed “III. Permission to appeal – Judicial Review Appeals, Planning Statutory Review Appeals and Appeals from the Employment Appeal Tribunal.” It includes CPR 52.8 which provides:

“Judicial review appeals from the High Court

52.8

(1) Where permission to apply for judicial review has been refused at a hearing in the High Court, an application for permission to appeal may be made to the Court of Appeal except where precluded by section 18(1) of the Senior Courts Act 198.

(2) Where permission to apply for judicial review of a decision of the Upper Tribunal has been refused by the High Court on the papers or where permission to apply for judicial review has been refused on the papers and recorded as being totally without merit in accordance with rule 23.12, an application for permission to appeal may be made to the Court of Appeal.

(3) An application under paragraph (1) must be made within 7 days of the decision of the High Court to refuse to give permission to apply for judicial review.

(4) An application under paragraph (2) must be made within 7 days of service of the order of the High Court refusing permission to apply for judicial review.

(5) On an application under paragraph (1) or (2), the Court of Appeal may, instead of giving permission to appeal, give permission to apply for judicial review.

(6) Where the Court of Appeal gives permission to apply for judicial review in accordance with paragraph (5), the case will proceed in the High Court unless the Court of Appeal orders otherwise.

83. Part 4 of CPR 52 is headed “IV. Additional Rules”. CPR 52.12 is headed “Appellant’s notice” and provides that:

“52.12

(1) Where the appellant seeks permission from the appeal court, it must be requested in the appellant’s notice.

(2) The appellant must file the appellant’s notice at the appeal court within—

(a) such period as may be directed by the lower court at the hearing at which the decision to be appealed was made or any adjournment of that hearing (which may be longer or shorter than the period referred to in sub-paragraph (b)); or

(b) where the court makes no such direction, and subject to the specific provision about time limits in rules 52.8 to 52.11 and Practice Direction 52D, 21 days after the date of the decision of the lower court which the appellant wishes to appeal.

(3) Subject to paragraph (4) and unless the appeal court orders otherwise, a sealed copy of the appellant’s notice must be served on each respondent—

a) as soon as practicable; and

(b) in any event where it is served by the appellant not later than 14 days,

after it is sealed.”

84. CPR 52.13 is headed “Respondent’s notice” and provides so far as material:

“52.13

(1) A respondent may file and serve a respondent’s notice.

(2) A respondent who—

(a) is seeking permission to appeal from the appeal court; or

(b) wishes to ask the appeal court to uphold the decision of the lower court for reasons different from or additional to those given by the lower court,

must file a respondent's notice.

(3) Where the respondent seeks permission from the appeal court it must be requested in the respondent's notice.

(4) A respondent's notice must be filed within—

(a) such period as may be directed by the lower court at the hearing at which the decision to be appealed was made or any adjournment of that hearing; or

(b) where the court makes no such direction, 14 days after the date in paragraph (5).

(5) The date referred to in paragraph (4) is—

(a) the date the respondent is served with the appellant's notice where—

(i) permission to appeal was given by the lower court;
or

(ii) permission to appeal is not required;

(b) the date the respondent is served with notification that the appeal court has given the appellant permission to appeal; or

(c) the date the respondent is served with notification that the application for permission to appeal and the appeal itself are to be heard together.

(6) Unless the appeal court orders otherwise, a respondent's notice must be served on the appellant and any other respondent—

(a) as soon as practicable; and

(b) in any event not later than 7 days,

after it is filed.

.....”

85. Ms Ammori wishes to challenge part of the order of the Judge. In particular, she wishes to challenge paragraph 5(a) of the order which refused permission to apply for judicial review on grounds 1, 3, 4, 5 and 6. A decision refusing permission is a decision that can be the subject of an appeal: see *R v Secretary of State for Trade and*

Industry ex p. Eastaway [2000] 2 WLR 2222 at page 2224A-G. That is reflected in the provisions of CPR 52.8 which provide that “where permission to apply for judicial review has been refused at a hearing in the High Court” then “an application for permission may be made to the Court of Appeal”. Although CPR 52.8 refers to permission to apply for judicial review, it must also apply when permission to apply is refused on some grounds but granted on others. It is implicit in CPR 54.12 that permission can be granted on certain grounds only. That rule provides that where permission to apply for judicial review is granted “on certain grounds only”, the claimant may not appeal but may request reconsideration of that decision at an oral hearing in the High Court. CPR 52.8(3) also deals with the time within which an application for permission in such cases must be made. It must be made within seven days of the decision of the High Court refusing to give permission to apply for judicial review.

86. Our analysis is that any application for permission to appeal against a decision of the High Court refusing permission to apply for judicial review on a particular ground or grounds must be brought within the time-limit provided by CPR 52.8. We do not consider that that requirement can be circumvented, or the time limit avoided, by seeking to include the application in a respondent’s notice and seeking to argue that the time limit for service of that notice is 14 days after service of an appellant’s notice or of notification of the grant of permission as provided for by CPR 52.13 rather than within the seven days after the decision of the High Court refusing of permission to apply, as provided for by CPR 52.8. We reach that conclusion for the following reasons.
87. First, CPR 52.8 makes specific provision dealing with applications for permission to appeal where permission to apply for judicial review has been refused by the High Court. CPR 52.8(3) sets out the time limit for doing so. It sets out the powers of the Court when granting the application. The Court may grant permission to appeal or, instead, may grant permission to apply for judicial review: see CPR 52.8(5). If the Court does the latter, CPR 52.8(6) provides that the case will then proceed in the High Court unless the Court of Appeal otherwise directs.
88. Furthermore, that conclusion is reinforced by the structure of CPR 52 taken as a whole. Part 3 deals with specific categories of cases including applications for permission to appeal against the refusal by the High Court of permission to apply for judicial review. Part 4 includes as additional rules. We do not consider that the additional rules were intended to provide a means of applying for permission to appeal in the specific case of refusals to apply for judicial review. Rather the additional rules deal with the generality of appeals, not those specific cases dealt with by Part 3 of CPR 52.
89. Secondly, a situation where CPR 52.8 applies to certain cases involving applications for permission to appeal against a refusal of permission to apply for judicial review but not others would have arbitrary and potentially unworkable results. In most cases, a claimant for judicial review will have been refused permission to apply for judicial review on some or all of the grounds. The claimant alone will be seeking to appeal the order of the court. It is unclear whether it is theoretically possible for a defendant to appeal against a decision granting permission to apply for judicial review but in practice that does not happen and any application for permission to appeal in those circumstances is likely to be refused as, permission having been granted, the

appropriate course is for the defendant to resist the claim in the High Court. In such cases, therefore, only the claimant will be making an application for permission to appeal and CPR 52.8 applies and any application for permission must be made within seven days of the decision refusing permission to apply for judicial review.

90. There are cases where the High Court may make an order which a defendant could, in principle, seek to appeal. The High Court may reject arguments by the defendant that the matter is not justiciable or amenable to judicial review, or, as here, that there is an adequate alternative remedy and there is no need to proceed by way of judicial review or, possibly, that the claim was brought out of time (or that an extension of time should not have been granted). The High Court may rule on that as a preliminary issue and a defendant may seek to appeal that part of the order. The defendant has 21 days from the date of the decision on the preliminary issue to appeal: see CPR 52.12. If the defendant does not appeal, the claimant cannot be a respondent in the Court of Appeal and the claimant cannot file an application for permission to appeal in a respondent's notice. There is no appeal by, or appellant's notice from, the defendant for the claimant to respond to. In addition, CPR 52.13 fixes the time limits for a respondent's notice by reference to the date when the respondent was served with the appellant's notice, or where the respondent is notified that permission to appeal has been granted (or that the application for permission to appeal, and the appeal itself, are to be heard together): see CPR 52.13(4) and (5). Where there has been no application for permission to appeal by the defendant in the court below, those provisions are not capable of regulating any application for permission to appeal by the claimant in the court below. There is no event which will determine the start of the 21-day period for appealing. If the claimant did not make an application for permission within seven days of the decision of the High Court refusing permission to apply for judicial review, the claimant would be out of time.
91. Furthermore, given that there may be no appeal by the defendant, the claimant will have to file the application for permission to appeal within seven days of the decision refusing permission to apply for judicial review if he or she wants to be sure that they are within time for making an application for permission. The claimant will not necessarily know whether the defendant will seek permission to appeal. If the defendant does not appeal, the claimant cannot then seek permission to appeal in a respondent's notice and will be out of time to file an appellant's notice.
92. Those factors are all strongly indicative of the fact that CPR 52.13 is not intended (and in many cases could not operate) to set the time limit within which an application for permission to appeal against a refusal by the High Court of permission to apply for judicial review. That time limit is fixed in such cases by CPR 52.8.
93. The question then is whether there is an exception in situations such as the present where the High Court decided a preliminary issue against the defendant and the defendant did seek permission to appeal against that issue. We can see no logical reason why, in that situation, the drafters of CPR 52 would have intended to make such an exception in order to give the claimant a right to seek permission to appeal (or, perhaps more accurately, for such a right to revive) because of the fact that the defendant can, and has, appealed against a different part of the order of the High Court. There is no link in substance between the preliminary issue on which a defendant will have appealed and the refusal of the High Court to grant the claimant permission to apply for judicial review. We do not consider it is accurate to

characterise the situation, as Mr Husain did, as one where the claimant has had a partial win (by being granted permission on certain grounds) and is entitled “to sit on that win” and if the defendant does apply for permission to appeal, for the claimant then to be able to apply for permission to apply in relation to other grounds. The fact of the matter is that the claimant, here Ms Ammori, has been refused permission to apply for judicial review on grounds 1, 5, 6 and 7. If she wishes those grounds to form part of the judicial review, she has to make an application for permission to appeal. The time limit for governing such applications is provided for by CPR 52.8.

94. Mr Husain also submitted that Ms Ammori is the respondent and so CPR 52.13 applies, and she must include the application for permission in a respondent’s notice. We do not consider that Ms Ammori is a respondent in relation to the refusal of permission to apply for judicial review. She is a “person who brings or seeks to bring an appeal” in relation to those matters. She is a respondent in that she is “a person other than the appellant who was a party to the proceedings in the lower court and who is affected by the appeal”. But the appeal is in relation to the preliminary issue as to whether there was an adequate alternative remedy available so that permission to apply for judicial review should be refused as a matter of discretion. In truth, however, it does not matter for these purposes whether Ms Ammori is an appellant or a respondent. She can make an application for permission in an appeal notice which is defined as “an appellant’s or a respondent’s notice”. The real question is whether the time limit for making an application for permission in such cases is governed by CPR 52.8 or CPR 52.13. For the reasons given, we consider that it is governed by CPR 52.8. A claimant will, therefore, have to file an appeal notice containing the application for permission within 7 days of the decision of the judge refusing permission to apply for judicial review. That will usually be an appellant’s notice. If for some reason, a defendant had applied for permission to appeal against a decision on a preliminary issue within seven days of the date on which a judge also refused permission to apply for judicial review, and if document described as a respondent’s notice containing an application for permission to appeal against a refusal of permission was served within seven days of the refusal, the Court of Appeal could either treat that as an appeal notice served within time or, if necessary, could direct that the respondent’s notice containing the application for permission to appeal stand as an appellant’s notice. Those are procedural matters governing the documents used to initiate proceedings in the Court of Appeal. They should not be allowed to detract from the real issue which is whether the time for making an application for permission to apply for judicial review is governed by CPR 52.8.
95. Finally, we have noted that CPR 52.12, which deals with appellants’ notices, is made specifically subject to CPR 52.8, whereas CPR 52.13 is not. We do not consider this to be of significance. The reason is this. A claimant seeking permission to appeal against a refusal of permission to apply for judicial review will be the appellant and will be using an appellant’s notice and so the drafters of the CPR 52 made it clear the general time limits in CPR 52.12 were subject to CPR 52.8. By contrast, CPR 52.13 is not intended to be the route by which applications for permission in such cases is sought. The general time limits would not, therefore, apply to such applications and the natural inference is that it was not considered necessary to make CPR 52.13 subject to 52.8.

96. For those reasons, the application by Ms Ammori for permission to appeal against the decision of the High Court refusing permission to apply for judicial review on grounds 1, 5, 6 and 7 was brought out of time. It should have been brought within seven days of the decision of the Judge, made on 30 July 2025. It was not made until 3 September 2025.

THE THIRD AND FOURTH ISSUES – THE EXTENSION OF TIME AND PERMISSION

97. It is convenient to take the third and fourth issues together. Ms Ammori needs, and is now (belatedly) applying for, an extension of time for making an application pursuant to CPR 3.1(2)(a). This is not a case where Ms Ammori has to apply for relief from sanctions under CPR 3.9. Nonetheless, the Court is required to approach applications for extensions of time in such circumstances in the same way and with same rigorous approach: see per Moore-Bick LJ, with whom the other members of the Court agreed, in *R (Hysaj) v Secretary of State for the Home Department* [2014] EWCA Civ 1633; [2015] 1 WLR 2472 at [34] and [36] and see the observations of Carr LJ (as she then was) in *R (Good Law Project Ltd) v Secretary of State for Health and Social Care* [2022] EWCA Civ 355; [2022] 1 WLR 2339 at [78]. Consequently, the Court will need to have regard to the seriousness and significance of the failure to apply within time, the reasons for the failure to do so and all the circumstances of the case.
98. First, the failure here is a serious one. The purpose of CPR 54 (dealing with judicial review claims) and CPR 52.8 is to ensure that such claims are brought promptly. CPR 54.5 provides that a claim must be brought promptly and in any event not later than three months after the grounds of claim first arose. It is well established that there is a need for prompt action in such cases. Decisions in public law affect not only the claimant and the public body concerned, but often affect third parties and the wider public interest. CPR 52.8 reflects that underlying policy. It seeks to ensure that any challenge to the refusal of leave to apply for judicial review is itself made promptly. That is to ensure that the claimant, the public body, third parties and the wider public know if there is to be a challenge and on what grounds. The requirement that any application for permission be brought within seven days of the decision of the judge reflects that underlying policy. Here, the application should have been made within seven days of the 30 July 2027. It was not in fact made for over a month.
99. Fortunately, however, the consequences of the delay on this occasion have been minimised for reasons unconnected with Ms Ammori. As it happens, Underhill LJ granted permission on the appeal on the preliminary issue and the appeal was listed to be heard on 25 September 2025. Lewis LJ ordered that Ms Ammori's application for permission be adjourned to an oral hearing and to be heard with the appeal listed for 25 September 2025 if possible. The Court was in fact able on 25 September both to hear submissions on the appeal and the application for permission to appeal. It was also able to fix a timetable for the application for an extension of time which has enabled judgment to be given in this case swiftly. As a result, any decision of this Court to grant permission in relation to one or more of the grounds of claim should not affect the substantive hearing of the claim in the High Court which is listed for late November. We would hope, and expect, that that hearing would be able to deal with any ground of claim for which we grant permission. Different considerations may well arise if the consequences of the grant of a late application were to result in the adjournment of the substantive hearing of a claim for judicial review.

100. Secondly, this is not a case where the representatives failed to act in accordance with clear rules or case law. They believed, albeit mistakenly, that an application for permission could be made once the Secretary of State had applied for permission to appeal on the preliminary issue. The relevant provisions of the CPR are not clear and there is, so far as we are aware, no pre-existing case law on the issue that arose. The position in future cases will, of course, be different as it is now clear from this judgment that any application for permission to appeal against a decision refusing permission to apply for judicial review, or refusing permission for certain grounds of claim, must be the subject of an application made in accordance with CPR 52.8.
101. Thirdly, there are particular circumstances of this case which make it desirable that all arguable grounds of claim are considered and dealt with together as soon as reasonably possible. The issue is one that has been the subject of much public interest. Furthermore, we are told that a large number of persons have been arrested for showing support for Palestine Action. There is much to be said for ensuring an authoritative judgment of the High Court on whether or not the order adding Palestine Action to the list of proscribed organisations is lawful. It is sensible for all arguable grounds to be considered as soon as possible.
102. For those reasons we grant Ms Ammori's application for an extension of time to appeal.
103. We consider next whether to grant permission on any of the four grounds, i.e. grounds 1, 5, 6 and 7. We emphasise that we are not deciding whether any of the grounds would succeed or fail when considered at the hearing. At this stage we are simply considering whether to grant permission on a particular ground. If so, that ground would then need to be the subject of legal argument and consideration of the evidence at a full hearing of the claim in order to determine whether or not the ground was in fact made out.
104. We deal first with grounds 5 and 6, where Mr Husain made oral submissions on behalf of Ms Ammori. Ground 5 is that the Secretary of State failed to have regard to relevant considerations. Mr Husain made it clear, orally, that Ms Ammori is only seeking to rely on the eight considerations set out in paragraph 82 of the amended statements of facts and grounds and not on other aspects of ground 5 as set out in the pleadings. He submitted that this ground involved consideration of domestic public law principles and could not, or not simply, be subsumed into the assessment of whether the Order was a proportionate interference with a Convention right granted by Article 9 or 10.
105. We agree. There is a separate domestic law issue as to whether any or all of the matters identified in paragraph 82 of the amended statement of facts and grounds are relevant considerations in the sense that that term is used in public law. That is, there is question of whether it is a mandatory consideration such that it would be unlawful for the Secretary of State not to have regard to it in the way described by the Supreme Court in *R (Friends of the Earth Ltd) v Secretary of State for Transport* [2021] PTSR 190 at [116] to [121] and see also *Keep Chiswell Green v Secretary of State for Housing, Communities and Local Government* [2025] EWCA Civ 958 at [82]. That will require legal argument and possibly consideration of evidence.

106. Similarly, ground 6 is an allegation that the Secretary of State failed to follow her published policy which prescribes that certain factors may be taken into account. Whether the Secretary of State has complied with her policy is not simply a question of proportionality which can be considered when considering the allegations of breach of Convention rights. It concerns principles of domestic public law and will require consideration of legal argument and evidence.
107. For those reasons we would grant permission to apply for judicial review (instead of granting permission to appeal) on grounds 5, limited to the matters raised in paragraph 82 of the amended statement of facts and grounds, and ground 6.
108. We deal next with grounds 1 and 7 where Ms Ní Ghrálaigh KC made oral submissions on behalf of Ms Ammori. Ground 1 is an allegation that the power to add Palestine Action to the list of proscribed organisations was used for an improper purpose. In oral submissions, Ms Ghrálaigh submitted that the power could only be used where the conduct of the organisation attained a high level of severity.
109. A power will be used for an improper purpose where it is used for a purpose not authorised by the statute which conferred it. The power here was used for the purpose set out by the statute. Section 3 of the Act provides that the Secretary of State may exercise her powers in connection with an organisation concerned with terrorism as defined in section 3(5) and section 1 of the Act. That will include, but is not limited to, action which involves serious damage to property. The judge was correct to hold that was what the Secretary of State had done. She had not sought to use her power for a purpose which was not one of the purposes of the Act. The contrary was not arguable. We agree. We refuse permission to appeal in relation to ground 1.
110. Ground 7 concerns a claim that the Secretary of State breached section 149 of the Equality Act 2010 (“the 2010 Act”). That section requires a public authority to have due regard to the need, amongst other things, to foster good relations between those who share a protected characteristic and those who do not (section 149(1)(c)). Ms Ní Ghrálaigh also submitted that the advancement of equality of opportunity between those who shared a relevant protected characteristics and those who did not could conceivably arise in this case.
111. Protected characteristics are defined in section 4 of the 2010 Act. They include, but are not limited to, race and religion or belief. Ms Ní Ghrálaigh submitted that the Secretary of State had failed to have due regard to members of the Palestinian community in Britain, and explained in oral argument that this community engaged the protected characteristic of race, which includes nationality and ethnic origin. She drew attention to the witness statements of Dr Shalan, who described amongst other things, her perception of the effect of the proscription of Palestine Action on the Palestine community in Britain, and Ms Dabbagh who describes the impact on her, and others, on Palestinians in Britain. Further, Ms Ní Ghrálaigh reminded us that not all persons of Palestinian origin are Muslim. Some are Christians, of other faiths or of no faith. The fact that the Secretary of State may have considered the position of Muslims in Britain did not, therefore, constitute consideration of all Palestinians.
112. The principles governing section 149 of the 2010 Act are well-established. They have been expressed in different ways in different cases. For present purposes, it is sufficient to note that, in broad terms, the duty under section 149 is a duty to have due

regard to the specified matters not a duty to achieve a specific result. The duty is one of substance, not form, and the real issue is whether the relevant public authority has, in substance, had regard to the relevant matters, taking into account the nature of the decision and the public authority's reasoning (see, e.g., *R (Baker) v Secretary of State for Communities and Local Government and another (Equality and Human Rights Commission intervening)* [2008] EWCA Civ 141[2009] PTSR 809 at [36]–[37], and *R (Bracking) v Secretary of State for Work and Pensions* [2013] EWCA Civ 1345; [2014] Eq LR 60, at [25]). As Lord Neuberger of Abbotsbury PSC observed at [74] of his judgment in *Hotak v Southwark London Borough Council (Equality and Human Rights Commission intervening)* [2015] UKSC 30; [2015] PTSR 1189 "the weight and extent of the duty are highly fact-sensitive and dependent on individual judgment". Further, it may be obvious from the subject matter of the decision that the decision-maker has had due regard to the relevant equality considerations.

113. The Judge correctly found that this ground was not arguable once regard was had to the material before the Secretary of State. As he noted at [92], the submissions made to the Secretary of State before she took the decision referred to the risk of effects on specific community groups, particularly those aligned with the pro-Palestinian case and British Muslim communities, including the risk that it would be seen as evidence of a disproportionate application of terrorism powers against the Muslim community. Similarly, the community impact assessment referred to the effects on the Muslim community and other communities. It noted the likely effects on British Muslims and their strong alignment with Palestine Action's objectives. It noted that Muslim-majority diasporas communities would hold strongly negative views on proscription and that one group asserted that "many Arab Christians in the UK are likely to share this opposition". It is clear that the Secretary of State did have regard to the effects of proscription. Furthermore, it is in any event obvious from the subject matter of the decision that the Secretary of State must have been weighing the impacts of proscription against its perceived benefits. The decision would proscribe an organisation, Palestine Action, whose purpose was said to be to prevent violations of international law against the Palestinian people. It is obvious that if she proscribes an organisation with that aim, it is likely to affect people who include Palestinians. This ground is unarguable.

CONCLUSION

114. We dismiss the appeal. An application to remove an organisation from the list of proscribed organisations, coupled with a right of appeal to POAC if the application is refused, is not an available, nor in any event an adequate, alternative remedy to a claim for judicial review of the initial decision to add an organisation to the list of proscribed organisations.
115. Ms Ammori's application for permission to appeal against the decision of the judge to refuse permission to apply for judicial review on grounds 1, 5, 6 and 7 was out of time as it should have been made within 7 days of the decision of the judge in accordance with CPR 52.8. We grant the necessary extension of time. We grant permission to apply for judicial review (instead of permission to appeal) in respect of ground 5, limited to the matters raised in [82] of the amended statement of facts and grounds, and ground 6. We refuse permission to appeal in relation to grounds 1 and 7 of the amended statement of facts and grounds.

Judgment Approved by the court for handing down.