EXPLANATORY MEMORANDUM TO

THE ASYLUM AND IMMIGRATION TRIBUNAL (PROCEDURE) (AMENDMENT NO. 2) RULES 2007

2007 No. 3170

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty

2. Description

2.1. The Asylum and Immigration Tribunal (Procedure) (Amendment No. 2) Rules 2007 ("the 2007 Rules") amend the Asylum and Immigration Tribunal (Procedure) Rules 2005, SI 2005/230 which prescribe the procedure to be followed for appeals and applications to the Asylum and Immigration Tribunal ("the AIT").

2.2. These Rules give effect to Article 10(2) of Council Directive 2005/85/EC of 1st December 2005 ("the Directive") laying down minimum standards on procedures in Member States for granting and withdrawing refugee status.

2.3. The 2007 Rules are intended to come into force on 1st December 2007, the date by which the Directive must be implemented.

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

3.1 None.

4. Legislative Background

4.1 Paragraph 2 of Article 10 (Guarantees for applicants for asylum) of the Directive specifies that certain guarantees, set out in paragraph 1(b), 1(c) and 1(d), should be applicable to the appeals procedure as well as to the initial application process. Paragraph 1(b) states that each applicant must, where necessary, receive the services of an interpreter for the purposes of submitting their case to the authorities; and paragraph 1(d) states that each applicant (or his/her representative) must be given notice in reasonable time of the decision on his/her application.

4.2 No amendment is required for paragraph 1(c), which specifies that applicants shall not be denied the opportunity to communicate with the United Nations High Commissioner for Refugees (UNHCR).

4.3 Rules for the AIT are made by the Lord Chancellor under sections 106 and 112 of the Nationality, Immigration and Asylum Act 2002. They are subject to the negative resolution procedure.

5. Extent

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

6. European Convention on Human Rights

6.1. As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

7.1. The majority of changes required to give effect to the Directive relate to the Immigration Rules, but a number of other procedural rules which cover asylum appeals also require minor amendments to ensure that they are consistent with the Directive insofar as it applies to the AIT.

7.2. In respect of paragraph 1(b) of Article 10, Rule 3 of the 2007 Rules inserts new Rule 49A into the 2005 Rules, making express provision for the existing practice whereby an appellant may be provided with the services of an interpreter when giving evidence in his appeal, and in other circumstances where the AIT considers it necessary.

7.3. With regard to paragraph 1(d) of the Directive, Rule 2 of the 2007 Rules inserts a new Rule 27 (3A). This uses the language of the Directive to clarify that notice of the decision in an application for a review of an immigration judge's decision must be given to the applicant in a reasonable time. Rules 22, 23 and 29 of the Tribunal's Procedure Rules already meet this requirement for appeals and reconsideration hearings.

7.4. Stakeholders were consulted on these amendments over a two and a half week period. The majority of stakeholders who responded were content with the amendments; however some AIT judiciary were strongly in favour of implementing the terminology of the Directive for the service provision and consequently this is the approach which has been adopted. The consultation did

not take the form of a formalised public consultation exercise as the amendments are minor, arise directly from the Directive and give effect to accepted procedure within the AIT rather than setting new policies or practices. The period of consultation was short for the same reasons. The AIT is a specialised area, and the MoJ consulted stakeholders representing those involved with and interested in AIT cases:

- The President and Deputy Presidents of the Asylum and Immigration Tribunal, the Council of Immigration Judges and the Association of Members of the Asylum and Immigration Tribunal;
- The Law Society, the Bar Council, the Office of the Immigration Services Commissioner;
- The Immigration Law Practitioners' Association (ILPA), the Immigration Advisory Service (IAS), the Refugee Legal Centre (RLC);
- The Administrative Justice and Tribunals Council;
- The UK Representative of the United Nations High Commissioner for Refugees and the Refugee Council;
- The Legal Services Commission:
- The Home Office, UKvisas, and the Treasury Solicitors, the Scottish Executive, the National Assembly for Wales and the Northern Ireland Court Service.

8. Impact

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

9. Contact

9.1. Any enquiries about the contents of this memorandum should be addressed to: Noreen Razvi, at the Tribunals Service, Ministry of Justice on 020 7566 1323 or Email: noreen.razvi@tribunals.gsi.gov.uk