EXPLANATORY MEMORANDUM TO
THE SPECIAL IMMIGRATION APPEALS COMMISSION (PROCEDURE) (AMENDMENT NO. 2) RULES 2007

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

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

2. Description

2.1 The Special Immigration Appeals Commission (Procedure) (Amendment No. 2) Rules 2007 ("the 2007 Rules") amend the Special Immigration Appeals Commission (Procedure) Rules 2003 ("the 2003 Rules"), SI 2003/1034.

2.2 The 2003 Rules prescribe the procedure to be followed for appeals to the Special Immigration Appeals Commission (SIAC) under section 2 or 2B of the Special Immigration Appeals Commission Act 1997 ("the SIAC Act"), which relates to immigration, asylum and citizenship cases which involve considerations of national security or public interest.

2.3 The main purpose of the 2007 Rules is to 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. They also make a minor amendment to clarify the time limits for applications for permission to appeal from the Commission to an appellate court.

2.4 The 2007 Rules are subject to affirmative resolution, and are intended to come into force on 1st December 2007, the date on 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 The Procedure Rules for SIAC are made by the Lord Chancellor under sections 5 and 8 of the SIAC Act. Section 8 deals with applications for permission to appeal from SIAC to an appellate court. Section 5(2) to (6) sets out those matters which the Lord Chancellor must have regard to when making Rules, and those provisions which he may or must include in them. Sections 5(9) and 8(4) prescribe the affirmative resolution procedure for instruments under the sections.

4.2 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.

4.3 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).

5. Extent

5.1 This instrument applies to all of the United Kingdom.

6. European Convention of Human Rights

6.1 David Hanson MP, the Minister of State, has made the following statement regarding human rights:
"In my view the provisions of the Special Immigration Appeals Commission (Procedure) (Amendment No 2) Rules 2007 are compatible with the Convention rights."

7. Policy background

7.1 Most of the 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 SIAC.

7.2 In respect of paragraph 1(b) of Article 10, Rule 3 of the 2007 Rules inserts new Rule 43A into the 2003 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 SIAC considers it necessary.

7.3 With regard to paragraph 1(d) of the Directive, Rule 4 of the 2007 Rules amends existing Rule 47(3) to clarify, using the language of the Directive, that notice of the decision must be given to the applicant in a reasonable time.

7.4 There is a third minor amendment to clarify the provisions on time limits for applications for permission to appeal from SIAC to an appellate court, which were amended by the Special Immigration Appeals Commission (Procedure) (Amendment) Rules 2007, S.I. 2007/1285 ("the previous amendments"). This amendment to Rule 27 of the 2003 Rules will clarify the position following a small amendment that was made by Rule 15 of the previous amendments. The policy intention has always been that both parties have ten days to apply for permission to appeal to an appellate court, from service of the final

determination. Rule 15 was intended to clarify that, because a provisional appeal determination is sent first to the Secretary of State for the Home Department ("the SSHD") to ensure it contains no material that cannot be disclosed for public interest or national security reasons, the ten-day time limit takes effect after these issues have been resolved. Rule 27 as it now stands is insufficiently clear, and although this is a very minor inconsistency that has not caused problems in practice, this is an opportune moment to make this amendment to clarify the Rule and ensure it is consistent with accepted practice within SIAC.

7.5 Rule 2 of the 2007 Rules expresses the time limit more fully, making clearer that the determination referred to in Rule 27 of the 2003 Rules is the final determination, not the provisional determination which is sent first to the SSHD to ensure it contains no material that cannot be disclosed for public interest or national security reasons. A parallel amendment is also made to the Proscribed Organisations Appeal Commission (Procedure) Rules 2007 by the Proscribed Organisations Appeal Commission (Procedure) (Amendment) Rules 2007, and is being laid before Parliament on the same day as this statutory instrument.

7.6 Stakeholders were consulted on these amendments over a two-week period. Stakeholders who responded were happy with the amendments. This did not take the form of a formalised public consultation exercise as two out of these three minor amendments arise directly from the Directive and use the terminology of the Directive, and all three amendments give effect to accepted procedure within SIAC rather than setting new policies or practices. SIAC is a specialised and technical area, and the MOJ consulted stakeholders representing the spectrum of those involved with and interested in SIAC cases:

- The Home Office
- The Special Advocates' Support Office (a Special Advocate is appointed where the case involves 'closed' material; the disclosure of which the SSHD certifies would be contrary to the public interest)
- The Treasury Solicitor, who acts for the respondent in SIAC appeals
- The Foreign and Commonwealth Office
- The Security Services
- The Chairman of SIAC, Mr Justice Mitting
- The Law Society and the Bar Council.

7.7 There is no statutory obligation to consult the Council on Tribunals ("the CoT") on the SIAC Procedure Rules as SIAC does not fall within the CoT's remit.

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 Rachel Haynes at the Tribunals Service can be contacted with queries regarding the instrument on 0116 249 4255 or by emailing rachel.haynes2@tribunals.gsi.gov.uk.