

**EXPLANATORY MEMORANDUM TO
THE PROSCRIBED ORGANISATIONS APPEAL COMMISSION
(PROCEDURE) (AMENDMENT) RULES 2007
2007/ No.3377**

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 Proscribed Organisations Appeal Commission (Procedure) (Amendment) Rules 2007 (“the Amendment Rules”) amend the Proscribed Organisations Appeal Commission (Procedure) Rules 2007 (“the 2007 Rules”), S.I. 2007/1286.
- 2.2 The Amendment Rules clarify the time limits for applications for permission to appeal from the Commission to an appellate court. This elucidates accepted POAC practice rather than setting any new procedures.
- 2.3 The Amendment Rules are subject to affirmative resolution, and are intended to come into force on 1st December 2007.

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

- 3.1 None.

4. **Legislative Background**

- 4.1 The 2007 Rules prescribe the procedure to be followed for appeals to the Proscribed Organisations Appeal Commission (POAC) under section 5 of the Terrorism Act 2000 (“the 2000 Act”) against refusals by the Secretary of State for the Home Department (“the SSHD”) to deproscribe organisations concerned in terrorism.
- 4.2 Paragraph 5(1) of Schedule 3 to the 2000 Act confers power on the Lord Chancellor to make Procedure Rules to govern appeals before POAC against the SSHD’s refusal to de-proscribe organisations. Paragraph 5(2) to (4) set out those matters which the Lord Chancellor must have regard to when making Rules, and those provisions which he may or must include in them. Paragraph 5(5) provides that the Rules are to be subject to the affirmative resolution procedure.
- 4.3 Section 6 of the 2000 Act deals with applications for permission to appeal to an appellate court.

- 4.4 The 2007 Rules replaced the Proscribed Organisations Appeal Commission (Procedure) Rules 2001 “the 2001 Rules”) in May 2007.

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 Proscribed Organisations Appeal Commission (Procedure) (Amendment) Rules 2007 are compatible with the Convention rights.”

7. Policy background

- 7.1 The policy objective of these Amendment Rules is to make a minor clarification, consistent with an amendment being made to the Special Immigration Appeals Commission (SIAC) Procedure Rules 2003 (“the SIAC Rules”) by the Special Immigration Appeals Commission (Procedure) (Amendment No. 2) Rules 2007 (“the SIAC Amendment Rules”). The SIAC Amendment Rules are laid before Parliament on the same day as this statutory instrument.

- 7.2 This amendment clarifies the time limits for applications for permission to appeal from POAC to an appellate court. This amendment to Rule 30 of the 2007 Rules will clarify the position following a small amendment that was made to Rule 30 when the 2007 Rules replaced the 2001 Rules. 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 30 of the 2007 Rules was intended to clarify that, because a provisional appeal determination is sent first to 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 30 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 POAC.

- 7.3 Rule 2 of the Amendment Rules expresses the time limit more fully, making clearer that the determination referred to in Rule 30 is the final determination, not the provisional determination which is sent first to the Home Secretary to ensure it contains no material that cannot be disclosed for public interest or national security reasons.

- 7.4 Stakeholders were consulted on this amendment over a two-week period. Stakeholders who responded were happy with the amendment. This did not take the form of a formalised public consultation exercise as this is a very

minor amendment which clarifies accepted procedure within POAC rather than setting new policies or practices. POAC is a specialised and technical area, and the MOJ consulted stakeholders representing the spectrum of those involved with and interested in POAC 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 POAC appeals
- The Foreign and Commonwealth Office
- The Security Services
- The Acting Chairman of POAC
- The Law Society and the Bar Council.

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

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