

These notes refer to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c.19) which received Royal Assent on 22 July 2004

ASYLUM AND IMMIGRATION (TREATMENT OF CLAIMANTS, ETC.) ACT 2004

EXPLANATORY NOTES

REMOVAL AND DETENTION

Section 33 and Schedule 3: Removing asylum seekers to a safe country

139. [Section 33](#) and Schedule 3 deal with situations where a person can be removed to a safe third country without substantive consideration of his asylum claim. They replace and extend the provisions currently contained in sections 11 and 12 of the Immigration and Asylum Act 1999.
140. In considering whether a claimant for asylum can be removed to a third country, obligations under the Refugee Convention and the Human Rights Act are potentially relevant. Under section 11 of the 1999 Act, certain countries are deemed safe for Refugee Convention purposes – that is to say they are to be regarded as:
- a) a place where a person’s life and liberty is not threatened by reason of his race, religion, nationality, membership of a particular social group, or political opinion; and
 - b) a place from which a person will not be sent to another country otherwise than in accordance with the Refugee Convention.
141. This prevents any claimant who is to be removed to one of these countries from challenging their removal on Refugee Convention grounds. A person can still challenge removal to those countries on the ground that it would be unlawful under Section 6 HRA as being incompatible with his Convention rights. But where the Secretary of State certifies a human rights claim as clearly unfounded, any appeal on this ground can only be pursued from abroad. Section 11 encompasses countries which have agreed to be bound by the Dublin arrangements (Council Regulation [\(EC\) No. 343/2003](#) or the Dublin Convention). Countries can also be certified as safe for Refugee Convention purposes under section 12 on a case by case basis.
142. Under the new provisions there will continue to be a deeming provision for Refugee Convention purposes in relation to those countries bound by the Dublin arrangements and a limited human rights deeming provision (preventing challenge on the basis of onward removal from the third country in breach of human rights) will be added.
143. In addition, the deeming provision for Refugee Convention purposes will be capable of extending to countries that would not be covered by section 11. Other countries can be certified as safe for a given individual as at present. In addition, in relation to certain countries, the legislation will provide for human rights claims to be certified as clearly unfounded unless the Secretary of State is satisfied that they are not clearly unfounded. The provisions therefore take a graduated approach to the “safety” of third countries for Refugee Convention and ECHR purposes.

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144. **Section 33** repeals sections 11 and 12 of the Immigration and Asylum Act 1999 and introduces Schedule 3, which contains the replacement provisions (see below). It also repeals sections 80 and 93 of the Nationality, Immigration and Asylum Act 2002 which set out an amended version of section 11 and limited the right to an “in country” appeal in relation to removals to safe third countries, respectively. The appeals provision is now dealt with in Schedule 3.
145. **Part 2** of Schedule 3 deals with countries that are deemed safe for Refugee Convention purposes and for claims that onward removal from the state would breach the ECHR. All other human rights claims against removal will be certified by the Secretary of State as clearly unfounded unless he is satisfied that they are not.
146. The countries listed at paragraph 2 are those which are subject or have agreed to be bound by the Dublin arrangements which are currently the members of the enlarged European Union as from May 2004 together with Norway and Iceland. Additional countries joining the Dublin arrangements may be added by order – see Part 6 below.
147. Under paragraph 3 in considering whether a person may be removed there, they are to be treated as places:
 - a) where a person’s life and liberty are not threatened by reason of his race, religion, nationality, membership of a particular social group or political opinion,
 - b) from which a person will not be sent in contravention of his rights under the Human Rights Convention, and
 - c) from which a person will not be sent to another State otherwise than in accordance with the Refugee Convention.
148. **Paragraph 4** disapplies section 77 of the Nationality, Immigration and Asylum Act 2002 (which prevents removal while an asylum claim is pending) where the Secretary of State certifies that a person is to be removed to a listed State and he is not a national or citizen of that State. Paragraph 5 prevents a person being removed bringing an appeal within the United Kingdom on the basis that the country is not safe for Refugee Convention purposes or ECHR purposes in terms of onward removal. Paragraph 5 provides that where a human rights claim made on another basis is certified as clearly unfounded a person being removed is similarly prevented from bringing an appeal within the United Kingdom. Finally, paragraph 5 provides that any human rights claim against removal (other than the on basis of onward removal) will be certified by the Secretary of State as clearly unfounded unless he is satisfied that it is not.
149. **Paragraph 6** prevents a person bringing an appeal from outside the United Kingdom on any ground inconsistent with the provisions in paragraph 3 described above.
150. **Part 3** of Schedule 3 deals with countries (not listed under Part 2) that are deemed safe for the purposes of the Refugee Convention. All human rights claims against removal will be certified by the Secretary of State as clearly unfounded unless he is satisfied that they are not. The list of countries is to be specified by order, and may be amended in accordance with Part 6 below.
151. Under paragraph 8, in considering whether a person may be removed there, they are to be treated as places:
 - a) where a person’s life and liberty are not threatened by reason of his race, religion, nationality, membership of a particular social group or political opinion,
 - b) from which a person will not be sent to another State otherwise than in accordance with the Refugee Convention.
152. **Paragraph 9** disapplies the provision in section 77 of the 2002 Act in the same way as paragraph 4 described above. Paragraph 10 prevents a person being removed bringing an appeal within the United Kingdom on the basis that the country is not safe for

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Refugee Convention purposes or on human rights grounds where the claim is certified as clearly unfounded. Paragraph 10 also provides that a human rights claim against removal will be certified by the Secretary of State as clearly unfounded unless he is satisfied that it is not.

153. [Paragraph 11](#) prevents a person bringing an appeal from outside the United Kingdom on any ground which is inconsistent with the provisions of paragraph 8 described above.
154. [Part 4](#) of Schedule 3 deals with countries that are deemed safe for the purposes of the Refugee Convention only. Human rights claims against removal may be certified by the Secretary of State as clearly unfounded. The list of countries is to be specified by order and may be amended in accordance with Part 6 below.
155. [Paragraph 13](#) provides that the countries are to be treated as safe for Refugee Convention purposes in the same way as under paragraph 8 above.
156. [Paragraph 14](#) disapplies the provision in section 77 of the 2002 Act in the same way as paragraph 4 described above. Paragraph 15 prevents a person being removed bringing an appeal within the United Kingdom on the basis that the country is not safe for Refugee Convention purposes or on human rights grounds where the claim is certified as clearly unfounded. Paragraph 16 has the same effect in relation to this Part as paragraph 11.
157. [Part 5](#) of Schedule 3 provides for the Secretary of State to certify a country (not listed under Parts 2, 3 or 4 of the Schedule) as safe for Refugee Convention purposes for a particular individual. Human rights claims against removal may be certified by the Secretary of State as clearly unfounded. Where a country is certified as safe for Refugee Convention purposes, section 77 of the 2002 Act is disapplied by virtue of paragraph 18 and the in country and out of country appeal rights are limited by paragraph 19 to the same extent as under paragraphs 15 and 16 discussed above.
158. [Part 6](#) of Schedule 3 provides order-making powers to amend the lists under Parts 2, 3, and 4.