

Status: Point in time view as at 20/11/2010.

Changes to legislation: Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, SCHEDULE 3 is up to date with all changes known to be in force on or before 02 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 3

Section 33

REMOVAL OF ASYLUM SEEKER TO SAFE COUNTRY

PART 1

INTRODUCTORY

1 (1) In this Schedule—

“asylum claim” means a claim by a person that to remove him from or require him to leave the United Kingdom would breach the United Kingdom’s obligations under the Refugee Convention,

“Convention rights” means the rights identified as Convention rights by section 1 of the Human Rights Act 1998 (c. 42) (whether or not in relation to a State that is a party to the Convention),

“human rights claim” means a claim by a person that to remove him from or require him to leave the United Kingdom would be unlawful under section 6 of the Human Rights Act 1998 (public authority not to act contrary to Convention) as being incompatible with his Convention rights,

“immigration appeal” means an appeal under section 82(1) of the Nationality, Immigration and Asylum Act 2002 (c. 41) (appeal against immigration decision), and

“the Refugee Convention” means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and its Protocol.

(2) In this Schedule a reference to anything being done in accordance with the Refugee Convention is a reference to the thing being done in accordance with the principles of the Convention, whether or not by a signatory to it.

Commencement Information

II Sch. 3 para. 1 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.

PART 2

FIRST LIST OF SAFE COUNTRIES (REFUGEE CONVENTION AND HUMAN RIGHTS (1))

2 This Part applies to—

- (a) Austria,
- (b) Belgium,
- [^{F1}(ba) Bulgaria,]
- (c) Republic of Cyprus,

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- (d) Czech Republic,
- (e) Denmark,
- (f) Estonia,
- (g) Finland,
- (h) France,
- (i) Germany,
- (j) Greece,
- (k) Hungary,
- (l) Iceland,
- (m) Ireland,
- (n) Italy,
- (o) Latvia,
- (p) Lithuania,
- (q) Luxembourg,
- (r) Malta,
- (s) Netherlands,
- (t) Norway,
- (u) Poland,
- (v) Portugal,
- [^{F2}(va) Romania,]
- (w) Slovak Republic,
- (x) Slovenia,
- (y) Spain, ^{F3}...
- (z) Sweden.
- [^{F4}(z1)] Switzerland.

Textual Amendments

- F1** Sch. 3 para. 2(ba) inserted (with effect in accordance with art. 1(3) of the commencing S.I.) by [Asylum \(First List of Safe Countries\) \(Amendment\) Order 2006 \(S.I. 2006/3393\)](#), arts. 1(2), **2(2)**
- F2** Sch. 3 para. 2(va) inserted (with effect in accordance with art. 1(3) of the commencing S.I.) by [Asylum \(First List of Safe Countries\) \(Amendment\) Order 2006 \(S.I. 2006/3393\)](#), arts. 1(2), **2(3)**
- F3** Word in Sch. 3 para. 2(y) deleted (with application in accordance with art. 1(3)(a) of the amending S.I.) by virtue of [The Asylum \(First List of Safe Countries\) \(Amendment\) Order 2010 \(S.I. 2010/2802\)](#), arts. 1(2), **2(a)** (with art. 1(3)(b))
- F4** Sch. 3 para. 2(z1) inserted (with application in accordance with art. 1(3)(a) of the amending S.I.) by [The Asylum \(First List of Safe Countries\) \(Amendment\) Order 2010 \(S.I. 2010/2802\)](#), arts. 1(2), **2(b)** (with art. 1(3)(b))

Commencement Information

- I2** Sch. 3 para. 2 in force at 1.10.2004 by [S.I. 2004/2523](#), art. 2, [Sch.](#)

- 3 (1) This paragraph applies for the purposes of the determination by any person, tribunal or court whether a person who has made an asylum claim or a human rights claim may be removed—
- (a) from the United Kingdom, and
 - (b) to a State of which he is not a national or citizen.

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- (2) A State to which this Part applies shall be treated, in so far as relevant to the question mentioned in sub-paragraph (1), as a place—
- (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 in contravention of his Convention rights, and
 - (c) from which a person will not be sent to another State otherwise than in accordance with the Refugee Convention.

Commencement Information

I3 Sch. 3 para. 3 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.

- 4 Section 77 of the Nationality, Immigration and Asylum Act 2002 (c. 41) (no removal while claim for asylum pending) shall not prevent a person who has made a claim for asylum from being removed—
- (a) from the United Kingdom, and
 - (b) to a State to which this Part applies;
- provided that the Secretary of State certifies that in his opinion the person is not a national or citizen of the State.

Commencement Information

I4 Sch. 3 para. 4 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.

- 5 (1) This paragraph applies where the Secretary of State certifies that—
- (a) it is proposed to remove a person to a State to which this Part applies, and
 - (b) in the Secretary of State's opinion the person is not a national or citizen of the State.
- (2) The person may not bring an immigration appeal by virtue of section 92(2) or (3) of that Act (appeal from within United Kingdom: general).
- (3) The person may not bring an immigration appeal by virtue of section 92(4)(a) of that Act (appeal from within United Kingdom: asylum or human rights) in reliance on—
- (a) an asylum claim which asserts that to remove the person to a specified State to which this Part applies would breach the United Kingdom's obligations under the Refugee Convention, or
 - (b) a human rights claim in so far as it asserts that to remove the person to a specified State to which this Part applies would be unlawful under section 6 of the Human Rights Act 1998 because of the possibility of removal from that State to another State.
- (4) The person may not bring an immigration appeal by virtue of section 92(4)(a) of that Act in reliance on a human rights claim to which this sub-paragraph applies if the Secretary of State certifies that the claim is clearly unfounded; and the Secretary of State shall certify a human rights claim to which this sub-paragraph applies unless satisfied that the claim is not clearly unfounded.

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- (5) Sub-paragraph (4) applies to a human rights claim if, or in so far as, it asserts a matter other than that specified in sub-paragraph (3)(b).

Commencement Information

I5 Sch. 3 para. 5 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.

- 6 A person who is outside the United Kingdom may not bring an immigration appeal on any ground that is inconsistent with treating a State to which this Part applies as a place—
- (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 in contravention of his Convention rights, and
 - (c) from which a person will not be sent to another State otherwise than in accordance with the Refugee Convention.

Commencement Information

I6 Sch. 3 para. 6 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.

PART 3

SECOND LIST OF SAFE COUNTRIES (REFUGEE CONVENTION AND HUMAN RIGHTS (2))

- 7 (1) This Part applies to such States as the Secretary of State may by order specify.
- (2) An order under this paragraph—
- (a) shall be made by statutory instrument, and
 - (b) shall not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

Commencement Information

I7 Sch. 3 para. 7 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.

- 8 (1) This paragraph applies for the purposes of the determination by any person, tribunal or court whether a person who has made an asylum claim may be removed—
- (a) from the United Kingdom, and
 - (b) to a State of which he is not a national or citizen.
- (2) A State to which this Part applies shall be treated, in so far as relevant to the question mentioned in sub-paragraph (1), as a place—
- (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, and
 - (b) from which a person will not be sent to another State otherwise than in accordance with the Refugee Convention.

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Commencement Information

I8 Sch. 3 para. 8 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.

- 9 Section 77 of the Nationality, Immigration and Asylum Act 2002 (c. 41) (no removal while claim for asylum pending) shall not prevent a person who has made a claim for asylum from being removed—
- (a) from the United Kingdom, and
 - (b) to a State to which this Part applies;
- provided that the Secretary of State certifies that in his opinion the person is not a national or citizen of the State.

Commencement Information

I9 Sch. 3 para. 9 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.

- 10 (1) This paragraph applies where the Secretary of State certifies that—
- (a) it is proposed to remove a person to a State to which this Part applies, and
 - (b) in the Secretary of State's opinion the person is not a national or citizen of the State.
- (2) The person may not bring an immigration appeal by virtue of section 92(2) or (3) of that Act (appeal from within United Kingdom: general).
- (3) The person may not bring an immigration appeal by virtue of section 92(4)(a) of that Act (appeal from within United Kingdom: asylum or human rights) in reliance on an asylum claim which asserts that to remove the person to a specified State to which this Part applies would breach the United Kingdom's obligations under the Refugee Convention.
- (4) The person may not bring an immigration appeal by virtue of section 92(4)(a) of that Act in reliance on a human rights claim if the Secretary of State certifies that the claim is clearly unfounded; and the Secretary of State shall certify a human rights claim where this paragraph applies unless satisfied that the claim is not clearly unfounded.

Commencement Information

I10 Sch. 3 para. 10 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.

- 11 A person who is outside the United Kingdom may not bring an immigration appeal on any ground that is inconsistent with treating a State to which this Part applies as a place—
- (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, and
 - (b) from which a person will not be sent to another State otherwise than in accordance with the Refugee Convention.

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Commencement Information

I11 Sch. 3 para. 11 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.

PART 4

THIRD LIST OF SAFE COUNTRIES (REFUGEE CONVENTION ONLY)

- 12 (1) This Part applies to such States as the Secretary of State may by order specify.
- (2) An order under this paragraph—
- (a) shall be made by statutory instrument, and
 - (b) shall not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

Commencement Information

I12 Sch. 3 para. 12 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.

- 13 (1) This paragraph applies for the purposes of the determination by any person, tribunal or court whether a person who has made an asylum claim may be removed—
- (a) from the United Kingdom, and
 - (b) to a State of which he is not a national or citizen.
- (2) A State to which this Part applies shall be treated, in so far as relevant to the question mentioned in sub-paragraph (1), as a place—
- (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, and
 - (b) from which a person will not be sent to another State otherwise than in accordance with the Refugee Convention.

Commencement Information

I13 Sch. 3 para. 13 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.

- 14 Section 77 of the Nationality, Immigration and Asylum Act 2002 (c. 41) (no removal while claim for asylum pending) shall not prevent a person who has made a claim for asylum from being removed—
- (a) from the United Kingdom, and
 - (b) to a State to which this Part applies;
- provided that the Secretary of State certifies that in his opinion the person is not a national or citizen of the State.

Commencement Information

I14 Sch. 3 para. 14 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.

- 15 (1) This paragraph applies where the Secretary of State certifies that—

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- (a) it is proposed to remove a person to a State to which this Part applies, and
 - (b) in the Secretary of State's opinion the person is not a national or citizen of the State.
- (2) The person may not bring an immigration appeal by virtue of section 92(2) or (3) of that Act (appeal from within United Kingdom: general).
- (3) The person may not bring an immigration appeal by virtue of section 92(4)(a) of that Act (appeal from within United Kingdom: asylum or human rights) in reliance on an asylum claim which asserts that to remove the person to a specified State to which this Part applies would breach the United Kingdom's obligations under the Refugee Convention.
- (4) The person may not bring an immigration appeal by virtue of section 92(4)(a) of that Act in reliance on a human rights claim if the Secretary of State certifies that the claim is clearly unfounded.

Commencement Information

I15 Sch. 3 para. 15 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.

- 16 A person who is outside the United Kingdom may not bring an immigration appeal on any ground that is inconsistent with treating a State to which this Part applies as a place—
- (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, and
 - (b) from which a person will not be sent to another State otherwise than in accordance with the Refugee Convention.

Commencement Information

I16 Sch. 3 para. 16 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.

PART 5

COUNTRIES CERTIFIED AS SAFE FOR INDIVIDUALS

- 17 This Part applies to a person who has made an asylum claim if the Secretary of State certifies that—
- (a) it is proposed to remove the person to a specified State,
 - (b) in the Secretary of State's opinion the person is not a national or citizen of the specified State, and
 - (c) in the Secretary of State's opinion the specified State is a place—
 - (i) where the person's life and liberty will not be threatened by reason of his race, religion, nationality, membership of a particular social group or political opinion, and
 - (ii) from which the person will not be sent to another State otherwise than in accordance with the Refugee Convention.

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Commencement Information

I17 Sch. 3 para. 17 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.

- 18 Where this Part applies to a person section 77 of the Nationality, Immigration and Asylum Act 2002 (c. 41) (no removal while claim for asylum pending) shall not prevent his removal to the State specified under paragraph 17.

Commencement Information

I18 Sch. 3 para. 18 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.

- 19 Where this Part applies to a person—
- (a) he may not bring an immigration appeal by virtue of section 92(2) or (3) of that Act (appeal from within United Kingdom: general),
 - (b) he may not bring an immigration appeal by virtue of section 92(4)(a) of that Act (appeal from within United Kingdom: asylum or human rights) in reliance on an asylum claim which asserts that to remove the person to the State specified under paragraph 17 would breach the United Kingdom's obligations under the Refugee Convention,
 - (c) he may not bring an immigration appeal by virtue of section 92(4)(a) of that Act in reliance on a human rights claim if the Secretary of State certifies that the claim is clearly unfounded, and
 - (d) he may not while outside the United Kingdom bring an immigration appeal on any ground that is inconsistent with the opinion certified under paragraph 17(c).

Commencement Information

I19 Sch. 3 para. 19 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.

PART 6

AMENDMENT OF LISTS

- 20 (1) The Secretary of State may by order add a State to the list specified in paragraph 2.
- (2) The Secretary of State may by order —
- (a) add a State to a list specified under paragraph 7 or 12, or
 - (b) remove a State from a list specified under paragraph 7 or 12.

Commencement Information

I20 Sch. 3 para. 20 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.

- 21 (1) An order under paragraph 20(1) or (2)(a)—
- (a) shall be made by statutory instrument,
 - (b) shall not be made unless a draft has been laid before and approved by resolution of each House of Parliament, and

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- (c) may include transitional provision.
- (2) An order under paragraph 20(2)(b)—
 - (a) shall be made by statutory instrument,
 - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament, and
 - (c) may include transitional provision.

Commencement Information

I21 Sch. 3 para. 21 in force at 1.10.2004 by S.I. 2004/2523, art. 2, Sch.

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