

**EXPLANATORY MEMORANDUM TO**  
**THE ASYLUM (DESIGNATED STATES) ORDER 2005**

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

**2. Description**

2.1 Article 2 of the Order adds India to the list of designated countries in section 94 of the Nationality, Immigration and Asylum Act 2002 (“the 2002 Act”). Those designated countries are considered to be generally safe in the context of asylum and human rights claims. An unsuccessful asylum or human rights claim made by a person entitled to reside in a designated state will be certified as clearly unfounded - such that there will be no in country right of appeal against the refusal of their claim – unless the Secretary of State is satisfied that their claim is not clearly unfounded. Article 1 provides that the Order will come into force on the day after it is made, but shall not apply to an asylum or human rights claim made prior to the Order’s commencement.

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

3.1 None.

**4. Legislative background**

4.1 Section 94 of the 2002 Act is concerned with appeal rights in respect of asylum and human rights claims which are clearly unfounded.

4.2 Section 94(2) provides that a person may not rely on having made an asylum or human rights claim in order to appeal from within the UK if the Secretary of State certifies the asylum or human rights claim as clearly unfounded.

4.3 Section 94(3) provides that where the Secretary of State is satisfied that a person is entitled to reside in a state listed in subsection (4) he shall issue a certificate under subsection (2) unless satisfied that the claim is not clearly unfounded. Fourteen States are currently listed in subsection (4). They comprise the seven added by the Asylum (Designated States) Order 2003 and the further seven added by the Asylum (Designated States) (No.2) Order 2003. (The original 10 States listed in subsection (4) on the face of the 2002 Act were removed on 1 October 2004 when section 27(4) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 was

commenced. These removals flowed from the accession of those States to the European Union.) The 14 States are:

- (k) the Republic of Albania
- (l) Bulgaria
- (m) Serbia and Montenegro
- (n) Jamaica
- (o) Macedonia
- (p) the Republic of Moldova
- (q) Romania
- (r) Bangladesh
- (s) Bolivia
- (t) Brazil
- (u) Ecuador
- (v) Sri Lanka
- (w) South Africa
- (x) Ukraine.

- 4.4 Subsection (5) confers an order-making power on the Secretary of State to add a state or part of a state to the list in subsection (4) provided certain conditions are met. (Subsection (5A), as inserted by section 27(5) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, also enables the Secretary of State to add a state or part to the list in respect of a “description of person” only rather than all residents. No designations in respect of a “description of person” have yet been made.) By virtue of section 112(4) any such order is subject to the affirmative resolution procedure.
- 4.5 Subsection (5) sets out that to add a state or part state to the list in subsection (4), the Secretary of State must be satisfied that:
- “(a) there is in general in that State or part no serious risk of persecution of persons entitled to reside in that State or part, and
- (b) removal to that State or part of persons entitled to reside there will not in general contravene the United Kingdom’s obligations under the Human Rights Convention.”
- 4.6 Section 94(6) enables the Secretary of State by order (under the negative resolution procedure – section 112(5) refers) to remove from the list in subsection (4) a State or part State added under subsection (5).

## **5. Extent**

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

## **6. European Convention on Human Rights**

The Minister of State for the Home Department, Des Browne, has made the following statement regarding Human Rights:

In my view the provisions of the Asylum (Designated States) Order 2005 are compatible with the Convention rights.

## **7. Policy Background**

- 7.1 The purpose of section 94 is to ensure that where an individual makes an asylum or human rights claim which is clearly unfounded they will not be able to prolong their stay in the United Kingdom by virtue of making such a claim.
- 7.2 The inclusion of a list of States does not alter the core feature of the section, namely that a right of appeal in the United Kingdom can be denied only where an asylum or human rights claim is considered, after an individual assessment, to be clearly unfounded. However, including a State on the list does have an effect by obliging, as opposed to permitting, the Secretary of State to certify a claim which is clearly unfounded.
- 7.3 The list balances the need to retain individual consideration of claims with the need to operate an effective and credible asylum system which deals swiftly and firmly with unfounded claims. The Government places considerable importance on reducing the number of unfounded asylum claims and section 94 and the orders made under it contribute towards that aim.
- 7.4 The Secretary of State is satisfied that India meets the conditions set out in section 94(5). The Advisory Panel on Country Information (an independent body established by section 142 of the 2002 Act with the function of considering and making recommendations to the Secretary of State about the content of country information) was consulted on the country information relied on by the Secretary of State to assess whether India met the test for designation.
- 7.5 In 2003, there were 2,275 asylum claims from Indians, 2,305 decisions were taken and only 1 or 2 grants of asylum were made. For the first nine months of 2004 there have been 1,095 claims, 1,220 decisions and again only 1 or 2 grants of asylum. In both years less than 5% of appeals have been successful.

## **8. Impact**

- 8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.
- 8.2 The impact on the public sector is not expected to be significant.

## **9. Contact**

Iain Walsh at the Home Office, tel: 020 8760 8449 or e-mail [iain.walsh@homeoffice.gsi.gov.uk](mailto:iain.walsh@homeoffice.gsi.gov.uk) can answer any questions regarding the instrument.