

**EXPLANATORY MEMORANDUM TO
THE ASYLUM (DESIGNATED STATES) (AMENDMENT) (No.2) ORDER
2006**

2006 No. 3275

1. This explanatory memorandum has been prepared by the Home Office 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 Article 2 of the order removes Sri Lanka from the list of designated countries in section 94 of the Nationality, Immigration and Asylum Act 2002 (“the 2002 Act), which 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 the person will have 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.

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

- 3.1 The Home Office intends to breach the 21 day rule as it is of the opinion that the provisions of this Order must come into force with immediate effect. This is to ensure that Sri Lanka does not remain on the list of designated countries – thus obliging the Secretary of State to certify claims which are clearly unfounded - where the legal criteria for designation is no longer met. This Order will not prejudice an asylum or human rights claim.
- 3.2 If the Order did not to come into force until after 21 days, it would be necessary to instruct caseworkers during this period not to implement the law regarding mandatory certification of clearly unfounded asylum claims made by Sri Lankan nationals.

4. **Legislative background**

- 4.1 Section 94 of the 2002 Act is concerned with appeal rights in respect of asylum and human rights claims that 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 United Kingdom 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.
- 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).
- 4.7 Ten States were originally listed in subsection (4) on the face of the 2002 Act, namely:
- (a) the Republic of Cyprus
 - (b) the Czech Republic
 - (c) the Republic of Estonia
 - (d) the Republic of Hungary
 - (e) the Republic of Latvia
 - (f) the Republic of Lithuania
 - (g) the Republic of Malta
 - (h) the Republic of Poland
 - (i) the Slovak Republic
 - (j) the Republic of Slovenia

These States were removed from the list 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.

- 4.8 Seventeen States are currently listed in subsection (4). They comprise the seven added by the Asylum (Designated States) Order 2003; namely:

- (k) the Republic of Albania
- (l) Bulgaria
- (m) Serbia and Montenegro
- (n) Jamaica
- (o) Macedonia
- (p) the Republic of Moldova
- (q) Romania

a further six added by the Asylum (Designated States) (No.2) Order 2003; namely:

- (s) Bolivia
- (t) Brazil
- (u) Ecuador
- (v) Sri Lanka
- (w) South Africa
- (x) Ukraine

one added by the Asylum (Designated States) Order 2005; namely:

- (y) India

and three added by the Asylum (Designated States) (No 2) Order 2005; namely:

- (z) Mongolia
- (aa) Ghana (in respect of men)
- (bb) Nigeria (in respect of men).

- 4.9 Bangladesh was added to the list by the Asylum (Designated States) (No.2) Order 2003 and then removed by the Asylum (Designated States) (Amendment) Order 2005.

- 4.10 The Asylum (Designated States) (Amendment) Order 2006 will remove Bulgaria and Romania from the list with effect from 1 January 2007 following their accession to the European Union.

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, Liam Byrne, has made the following statement regarding Human Rights:

In my view the provisions of the Asylum (Designated States) (Amendment) (No 2) Order 2006 are compatible with the Convention rights.

7. Policy Background

- 7.1 The purpose of section 94 of the 2002 Act is to ensure that where an individual makes an asylum or human rights claim that 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, inclusion of 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 that 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 Having regard to the latest available information about the situation in Sri Lanka and in particular the deterioration in conditions, the Secretary of State now wishes to exercise his power under section 94(6) to remove Sri Lanka from the list of designated states in section 94(4).

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

Andrew Saunders at the Home Office, tel: 020 8760 8191 or e-mail andrew.saunders@homeoffice.gsi.gov.uk can answer any questions regarding the instrument.