

**EXPLANATORY MEMORANDUM TO**  
**THE ASYLUM (FIRST LIST OF SAFE COUNTRIES) (AMENDMENT) ORDER 2006**  
**2006 No. 3393**

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 This Order adds Bulgaria and Romania to the list of safe third countries to which an asylum seeker can be removed from the United Kingdom (providing he is not a national or a citizen of that country) without consideration of the merits of his asylum claim.

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

3.1 None.

4. **Legislative Background**

4.1 Section 33 and Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 is concerned with situations whereby an asylum seeker can be removed to a safe third country without substantive consideration of his asylum claim. Part 2 of Schedule 3 contains the first list of safe countries which are to be treated as safe for the purpose of determining whether a third country national, who has made an asylum or human rights claim in the United Kingdom, may be removed to one of them. The list includes all Member States of the European Union (EU) and States in the European Economic Area (EEA), all of which are countries bound by the arrangements for determining responsibility for examining an asylum claim set down in Regulation (EC) No. 343/2003 (the “Dublin II” Regulation). EU Member States are also bound by other European legislation forming part of the Common European Asylum System

4.2 Part 6 of Schedule 3 provides for the amendment of lists by Order and under paragraph 20(1) a State may be added to the list at Part 2. By virtue of sub-paragraph 21(1)(b) any such Order is subject to the affirmative resolution procedure. This is the first use of any of the Part 6 Order making powers.

5. **Territorial Extent and Application**

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 (First List of Safe Countries) (Amendment) Order 2006 are compatible with the Convention rights.

## **7. Policy background**

7.1 The purpose of Section 33 of and Schedule 3 to the 2004 Act is to provide a framework for the removal of asylum seekers to safe third countries without substantive consideration of their asylum claims in the United Kingdom. A safe third country is not the country of which the asylum seeker is a national or citizen, but is one where the asylum claim should more properly be considered.

7.2 The legislative intention in Part 2 of Schedule 3 is to reduce the circumstances in which removal of asylum seekers to safe third countries can be frustrated on the basis of unmeritorious claims about treatment in, or removal from, those third countries. States listed in Part 2 are places:

- where an asylum seeker's life and liberty will not be threatened in that country by reason of race, religion, nationality, membership of a particular social group or political opinion; and
- from which the government of that country will not send the asylum seeker to another country other than in accordance with the 1951 Convention (the concept of 'non-refoulement').

i.e. there is no scope to challenge removal on Refugee Convention grounds either before or after removal from the UK.

7.3 Part 2 listed countries are also presumed to be safe in the sense they will not remove an asylum seeker in contravention of the European Convention on Human Rights (ECHR).

7.4 Part 2 also requires the Secretary of State to certify any other claims that removal will breach an asylum seeker's human rights (either in the UK or in the receiving third country) as clearly unfounded unless he is satisfied that they are not. If a claim is certified, whilst an asylum seeker may appeal against the decision to remove him from the United Kingdom, he may only do so 'out of country'. Human rights claims that are refused but not certified as clearly unfounded may be appealed in country.

7.5 In the particular case of Bulgaria and Romania the Secretary of State wishes to exercise his power to add both countries to the first list of safe third countries at Part 2 of Schedule 3. Actions to transfer asylum seekers will take place in the context of a specific EU legislative framework – the Dublin II Regulation - and asylum claimants in those states will have access to remedies under the ECHR and relevant EU instruments, such as those establishing a Common European Asylum System under Article 63 of the Treaty establishing the European Community. The Order is therefore drafted to come into force on 1 January 2007 to coincide with Bulgaria and Romania joining the EU.

## **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.

## **9. Contact**

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