

EXPLANATORY MEMORANDUM TO
THE ASYLUM (DESIGNATED STATES) (No. 2) ORDER 2005

2005 No.3306

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

2. Description

2.1 This Order adds Mongolia to the list of States in section 94(4) of the Nationality, Immigration and Asylum Act 2002 (“the Act”). It also adds Ghana and Nigeria to that list, in respect of men only. If the Secretary of State is satisfied that a person who has made an asylum and/or human rights claim is entitled to reside in a State listed in section 94(4), he shall certify the claim(s) as clearly unfounded, unless satisfied that it is/they are not clearly unfounded, with the result that the person may not appeal from within the United Kingdom.

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

3.1 None.

4. Legislative Background

4.1 Under section 94(2) of the Act, a person may not bring an appeal under section 82(1) of that Act while in the United Kingdom where he has made a human rights or asylum claim, or both, and the Secretary of State certifies that the claim is, or the claims are, clearly unfounded. Section 94(3) states that the Secretary of State shall issue a certificate under section 94(2) if he is satisfied that the claimant is entitled to reside in a State listed in section 94(4), unless he is satisfied that the claim is not clearly unfounded.

4.2 Section 94(5) allows the Secretary of State, by order, to add a State or part of a State to the list in section 94(4) if he is 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. Section 94(5A) states that if the Secretary of State is satisfied that the statements in section 94(5)(a) and (b) are true of a State or part of a State in relation to a description of person, an order under subsection (5) may add the State or part to the list in section 94(4) in respect of that description of person. By virtue of section 112(4) of the Act, an order under section 94(5) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

4.3 Section 94(6) allows the Secretary of State to make an order removing from the list in subsection (4) a State or part added under subsection (5). By virtue of section 112(5) of the Act, an order under section 92(6) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

4.3 Fourteen States are currently listed in section 94(4). Albania, Bulgaria, Serbia and Montenegro, Jamaica, Macedonia, Moldova and Romania were added by the Asylum (Designated States) Order 2003. Bangladesh, Bolivia, Brazil, Ecuador, Sri Lanka, South Africa and Ukraine were added by the Asylum (Designated States) (No.2) Order 2003. India was added by the Asylum (Designated States) Order 2005. Bangladesh was removed by the Asylum (Designated States) (Amendment) Order 2005. The original ten States listed in section 94(4) on the face of the Act were removed on 1 October 2004 when section 27(4) of the Asylum and

Immigration (Treatment of Claimants, etc.) Act 2004 was commenced. This flowed from the accession of those States to the European Union.

4.4 This is the first time the power in section 94(5A) has been used.

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, (Tony McNulty) has made the following statement regarding Human Rights:

In my view the provisions of the Asylum (Designated States) (No. 2) Order 2005 are compatible with the Convention rights.

7. Policy background

7.1 The Secretary of State is satisfied that Mongolia meets the conditions set out in section 94(5)(a) and (b) and that Ghana and Nigeria meet those conditions in respect of men. The Advisory Panel on Country Information (an independent body provided for by section 142 of the 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 of origin information material relied on by the Secretary of State to assess whether Mongolia, Ghana and Nigeria met the test for designation. The Panel found this material to be an accurate and objective representation of the country conditions

7.2 The number of asylum and human rights applications made by those entitled to reside in Mongolia Nigeria and Ghana is at a relatively high level given what is known about conditions in those countries. Very few of these claims prove to be well founded.

Country	Applications	Decisions	Grants of asylum	Grants of Humanitarian Protection	Grants of Discretionary Leave
Ghana 2004	355	325	5	0	5
Ghana January to June 2005	130	115	*	*	5
Mongolia 2004	110	130	5	0	5
Mongolia January 2005 to June 2005	60	60	*	0	*
Nigeria 2004	1090	1040	5	0	45
Nigeria January 2005 to June 2005	495	475	*	0	35

All figures are provisional and rounded to the nearest 5 with * = 1 or 2.

For all three countries less than 10% of appeals have been successful in 2004 and in the first 6 months of 2005.

7.3 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.

7.4 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.

7.5 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.

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

Susan Rogers at the Home Office Tel: 020 8760 8639 or e-mail:
susan.rogers@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.