EXPLANATORY MEMORANDUM TO

THE ASYLUM (DESIGNATED STATES) ORDER 2007

2007 No.

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 This Order concerns the list of designated States 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 must 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.

2.2 This Order adds Bosnia-Herzegovina, Mauritius, Montenegro, Peru and Serbia to the list. It also adds Gambia, Kenya, Liberia, Malawi, Mali and Sierra Leone in respect of men only.

2.3 This Order also amends the list by omitting the reference to Serbia and Montenegro. This follows on from the dissolution of the old State union between Serbia and Montenegro in 2006. Serbia, as the successor State to the old State union, has remained designated since the dissolution of the old State union (albeit that it has continued to be referred to in section 94 as "Serbia and Montenegro"). However, given that Montenegro is now being added to the list, to avoid confusion the reference to "Serbia and Montenegro" is being omitted and replaced with a reference to "Serbia".

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 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". 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 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 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 Fourteen States are currently listed in subsection (4). They comprise five added by the Asylum (Designated States) Order 2003; namely:

(k) the Republic of Albania

(m) Serbia and Montenegro
(n) Jamaica
(o) Macedonia
(p) the Republic of Moldova

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

(s) Bolivia
(t) Brazil
(u) Ecuador
(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 and Sri Lanka were added to the list by the Asylum (Designated States) (No.2) Order 2003 and then removed by the Asylum (Designated States) (Amendment) Order 2005 and the Asylum (Designated States) (Amendment) (No.2) Order 2006 respectively.

4.10 Bulgaria and Romania, which had been added to the list by the Asylum (Designated States) Order 2003, were removed by the Asylum (Designated States) (Amendment) Order 2006 with effect from 1 January 2007 following those States' 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) Order 2007 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 The number of asylum and human rights applications made by those covered by the designations listed in this Order was approximately 475 in 2005 and, based on provisional figures, over 300 in 2006. This is a relatively high level given what is known about conditions in those countries and very few of these claims prove to be well founded. The Secretary of State considers that designation of these States will contribute towards reducing the number of unfounded asylum and human rights claims which are made by those entitled to reside in these States. Full statistics are in the attached table.

7.5 The Secretary of State is satisfied that the States listed in this Order meet the conditions set out in section 94(5) (either in respect of everyone entitled to reside there or in respect of men entitled to reside there, where appropriate). Where countries have been designated in respect of men only, the Home Secretary is satisfied that, on the basis of the country information, the legal test for designation is met in respect of men entitled to reside in these States, but not yet met in respect of women. In these States, the evidence suggests that women are at risk for a variety of reasons (such as female genital mutilation, trafficking, domestic violence and forced marriage) and that the level of protection provided by the authorities at the present time is not yet sufficient to meet the test for designation in respect of women. The Advisory Panel on Country Information (APCI) - 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 Home Office country information considered by the Secretary of State when assessing whether the States listed in this Order met the test for designation. The APCI found the country information to be generally balanced, accurate and comprehensive. In some cases the APCI highlighted additional

material, to either supplement or update existing information and this was noted

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.

Asylum applications received in the United Kingdom, initial decision and appeals statistics (excluding dependents) nationals of Bosnia, Mauritius, Serbia and Montenegro, Peru, Gambia, Kenya, Liberia, Mali, Malawi and Sierra Leone. Statistics include gender breakdown in respect of males for Gambia, Kenya, Liberia, Mali, Malawi and Sierra Leone

Year	Bosnia	Mauritius	Serbia and Montenegro	Peru	Gambia	Kenya	Liberia	Mali	Malawi	Sierra Leone
2006										
Applications – All/ Male	20	15	70	*	110/70	95/40	45/30	5/5	65/35	125/65
Decisions – All/ Male	15	15	130	5	85/35	70/35	50/35	10/5	55/30	110/60
Grants of asylum – All/ Male	*	0	5	0	0/0	0/0	*/0	0/0	0/0	0/0
Grants of Humanitarian Protection – All/ Male	0	0	0	0	0/0	0/0	0/0	0/0	0/0	*/0
Grants of Discretionary leave – All Male	*	*	20	0	10/*	10/*	5/*	*/*	*/*	20/10
Refusals – All/ Male	15	10	110	5	90/55	80/35	40/30	10/5	55/30	85/50
Appeals heard – All/ Male	15	5	280	5	75/45	95/40	60/40	5/5	55/52	95/40
Appeals allowed – All/ Male	*	-	70	-	5/*	10/5	5/5	-	*/-	10/5
2005										
Applications – All/ Male	20	10	155	10	90/60	100/50	175/100	10/10	130/75	135/65
Decisions – All/ Male	25	5	470	5	85/60	105/45	215/130	5/5	110/65	175/95
Grants of asylum – All/ Male	5	0	5	0	*/*	*/0	*/*	0/0	0/0	*/*
Grants of Humanitarian Protection – All/ Male	0	*	0	0	0/0	0/0	*/0	0/0	*/*	10/*
Grants of Discretionary leave – All/ Male	*	0	50	0	5/*	10/*	15/10	*/*	*/*	20/10
Refusals – All/ Male	20	5	5	5	80/60	95/40	195/120	5/5	110/60	145/85
Appeals heard – All/ Male	20	10	10	10	95/60	165/75	295/205	5/*	115/60	260/155

Appeals allowed – All/ Male	5	-	-	*	5/5	20/5	25/15	-	*/-	30/20
Year	**Bosnia**	**Mauritius**	**Serbia and Montenegro**	**Peru**	**Gambia**	**Kenya**	**Liberia**	**Mali**	**Malawi**	**Sierra Leone**
2004										
Applications – All/ Male	15	20	290	5	100/75	145/55	405/290	10/05	170/105	230/145
Decisions – All/ Male	25	20	1145	10	120/85	205/85	500/355	10/05	155/95	375/230
Grants of asylum – All/ Male	-	*	20	-	-/-	05/05	5/*	-/-	*/*	05/05
Grants of Humanitarian Protection – All/ Male	-	-	*	-	-/-	-/-	*/*	-/-	*/*	5/-
Grants of Discretionary leave – All/ Male	*	-	160	-	*/*	30/10	65/40	*/-	5/*	45/15
Refusals – All/ Male	20	20	960	10	115/80	170/75	435/315	150/90	150/90	320/210
Appeals heard – All/ Male	40	20	2015	10	125/85	325/140	615/445	10/5	160/90	575/340
Appeals allowed – All/ Male	10	*	330	*	5/5	30/5	40/15	-	5/5	65/35
2003										
Applications – All/ Male	35	10	815	5	95/70	220/80	740/545	5/*	150/80	380/230
Decisions – All/ Male	65	10	1985	10	110/85	305/105	760/555	10/5	150/80	695/400
Grants of asylum – All/ Male	*	-	30	*	*/-	10/5	15/10	-/-	-/-	15/05
Grants of Exceptional Leave to Remain – All/ Male	*	-	195	-	5/	15/	10/	-/	*/-	25/
Grants of Humanitarian Protection – All/ Male	-	-	*	-	-/-	-/-	10/	-/-	-/-	5/-

Grants of Discretionary leave – All/ Male	*	-	140	*	5/-	30/10	*/*	*/-	*/*	40/25
Refusals – All/ Male	60	10	1625	5	100/80	245/90	650/480	5/5	150/80	610/360
Appeals heard – All/ Male	65	15	5735	15	110/85	625/255	480/365	5/5	130/75	1175/715
Appeals allowed – All// Male	15	*	910	*	5/5	105/30	110/80	*/-	15/10	155/70

Year	Bosnia	Mauritius	Serbia and Montenegro	Peru	Gambia	Kenya	Liberia	Mali	Malawi	Sierra Leone
2002										
Applications – All/ Male	50	10	2265	10	130/105	350/130	450/315	10/5	95/40	1155/720
Decisions – All/ Male	75	10	3500	10	110/90	360/145	355/250	5/5	60/30	1495/895
Grants of asylum – All//	5	-	225	*	-/-	5/5	5/5	*/-	5/-	55/20
Male	5	*	825	-	5/*	45/15	125/85	-/-	5/*	185/105
Grants of Exceptional Leave to Remain – All/ Male	65	5	2450	10	105/90	300/130	255/160	5	55/30	1255/775
Refusals – All/ Male	65	10	5605	10	45/35	555/265	55/40	5/5	40/15	1030/670
Appeals heard – All// Male	25	-	890	-	10/5	95/40	5/5	-	*/*	120/65
Appeals allowed – All/ Male										

(1) Figures rounded to nearest five with '*' = 1 or 2. Figures may not add up due to independent rounding.
(2) Information on asylum applications is on initial decisions, excluding the outcome of appeals or other subsequent decisions#
(3)Data on appeals outcomes by nationality are derived from electronic sources. Data on appeals outcomes in total are derived from manual counts which contain slightly more records. Figures include cases withdrawn by the Home Office , as well as the appellant. Determinations (appeals allowed) do not necessarily relate to appeals received in the same period