EXPLANATORY MEMORANDUM TO

THE NATIONALITY, IMMIGRATION AND ASYLUM ACT 2002 (AMENDMENT OF LIST OF SAFE STATES) REGULATIONS 2024

2024 No.

1. Introduction

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

2. Purpose of the instrument

2.1 This instrument amends the list of safe countries at section 80AA(1) of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") to include India and Georgia. Under section 80A of the 2002 Act, once the amendments to this section made by section 59 of the Illegal Migration Act 2023 ("the 2023 Act") are in force, any asylum or human rights claim made by a national of a listed country must be declared inadmissible, unless exceptional circumstances apply and the Secretary of State then decides to admit the claim for consideration. Under section 6 of the 2023 Act, a person subject to the duty to make removal arrangements who is a national of a country listed in section 80AA(1) of the 2002 Act may be returned to their home country if they have made a claim for asylum under the Refugee Convention or human rights claim, unless the Secretary of State considers there are exceptional circumstances which prevent the person's removal to that country.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is all of the United Kingdom.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is all of the United Kingdom.

5. European Convention on Human Rights

5.1 The Minister for Immigration has made the following statement regarding Human Rights:

"In my view the provisions of the Nationality, Immigration and Asylum Act 2002 (Amendment of List of Safe States) Regulations 2024 are compatible with the Convention rights."

6. Legislative Context

6.1 Section 80A of the 2002 Act currently provides that asylum claims (that is a claim by a person that to remove them from the UK would breach the UK's obligations under the Refugee Convention) from EU nationals must generally be declared inadmissible

to the UK's asylum system. Inadmissibility procedures allow a State to declare an asylum claim "inadmissible" when the claim is made by nationals of countries which are deemed safe (section 80A(5) provides a non-exhaustive list of exceptional circumstances), and individuals can be returned to their country of nationality.

6.2 Section 59(2) of the 2023 Act amends section 80A such that the inadmissibility provisions will apply to human rights claims (that is, a claim by a person that to remove them from the UK would be unlawful under section 6 of the Human Rights Act 1998 which provides that a public authority must not act contrary to the ECHR) as well as asylum claims. When commenced, the amended inadmissibility provisions in section 80A apply to asylum and human rights claims from nationals of states listed in section 80AA(1) of the 2002 Act.

6.3 Section 80AA (safe States for the purposes of section 80A) of the 2002 Act is inserted by section 59 of the 2023. Section 80AA(1) of the 2002 Act introduces a list of safe States. The Secretary of State is empowered, under section 80AA(2), to add States to the list by Regulations, provided the Secretary of State is satisfied that the States are safe in line with the test set out in section 80AA(3). In deciding whether a State is safe, the Secretary of State must, under section 80AA(4), have regard to all the circumstances of the State and information from any appropriate source.

6.4 In line with section 80AA(4), the Secretary of State has determined that India and Georgia are safe countries of origin, in line with the requirements of s.80AA(3).

6.5 Where the Secretary of State is required by section 2(1) of the 2023 Act to make arrangements for the removal of a person from the United Kingdom, section 6 of that Act makes further provision about removal including the country to which such a person (P) may be removed. Where the person is a national of a state listed in section 80AA(1) of the 2002 Act, or has obtained a passport or other identity document from such a state, section 6(4) of the Illegal Migration Act 2023 provides that the person may not be returned to that state if they have made a protection claim (that is a claim for asylum under the Refugee Convention) or human rights claim and the Secretary of State considers there are exceptional circumstances which prevent the person's removal to that country. Section 6(5) of the Illegal Migration Act sets out a non-exhaustive list of exceptional circumstances. In such a case, the person may be returned to a third country or territory, but only if that country or territory is listed in Schedule 1 to the 2023 Act.

7. Policy background

What is being done and why?

7.1 The list of countries at section 80AA(1) of the 2002 Act is being expanded, to include India and Georgia. The consequence of this are two-fold, as outlined above. First, when the amendments made to section 80A of the 2002 Act by section 59 of the 2023 Act are commenced, all asylum and human rights applications made by nationals of India and Georgia (and of the other states listed in section 80AA(1)) will be declared inadmissible under section 80A of the 2002 Act, unless there are exceptional circumstances, as a result of which the Secretary of State considers that the claim ought to be considered (as is the case for nationals of other listed countries). Where a claim is declared inadmissible, it will not be substantively considered on its merits, and the applicant will be liable to removal from the UK if they do not have any other lawful basis on which to remain. Secondly, when the duty to make removal

arrangements under section 2 of the 2023 Act comes into force and where a person meets the four conditions (section 2), nationals of the states listed in section 80AA(1), including India and Georgia, will be subject to the provisions in section 6 of the 2023 Act on removal summarised above, so that they will be able to be removed to their home country unless the Secretary of State considers that there are exceptional circumstances which prevent their removal to that country.

What did any law do before the changes to be made by this instrument?

7.2 The United Kingdom has for many years had provisions requiring the asylum claims of EU nationals to be declared inadmissible to the substantive asylum consideration process, unless exceptional circumstances apply and as a result of which the Secretary of State considers that the claim ought to be considered. These provisions are based on the Protocol on Asylum for Nationals of Member States (the "Spanish Protocol"), an EU instrument which recognised the fundamental safety of EU countries, and therefore permitted asylum claims from EU nationals to be considered by other EU countries only in very limited circumstances.

7.3 The demonstrable safety of these countries was not changed by the United Kingdom leaving the EU, and so these inadmissibility measures were maintained in paragraphs 326E-F of the Immigration Rules, before being included in section 80A of the 2002 Act (as amended previously by section 15 of the Nationality and Borders Act 2022 and as prospectively amended by section 59 of the 2023 Act). The continued availability of the EU inadmissibility process has helped to ensure that public resources have not been spent unnecessarily supporting EU nationals and considering their unfounded asylum claims.

7.4 It is clear that some countries which are not part of the EU may also be safe countries of origin. In recognition of this and of the pressures on the asylum system from unfounded claims, section 59 of the 2023 Act introduces measures to broaden the application of the inadmissibility provisions. When these measures are fully commenced, the section 80A provisions will no longer apply solely to asylum claims made by EU nationals; they will apply to asylum and human rights claims made by the national of any country listed in the new section 80AA(1) of the 2002 Act, and require those claims to be declared inadmissible (unless exceptional circumstances are identified as a result of which the Secretary of State decides that the claim ought to be substantively considered).

Why is it being changed?

7.5 At the time the 2023 Act received Royal Assent on 20 July 2023, section 80AA(1) included all of the EU Member States, Iceland, Norway, Liechtenstein, Switzerland and Albania. However, section 80A(2) allows for the list to be amended by regulations. After carefully considering the safety and human rights conditions in various countries against the tests set out in section 80A(3) and in line with section 80A(4) of the 2002 Act, it has been determined that India and Georgia should be added to the list of safe countries of origin at section 80AA(1) of the 2002 Act.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 This instrument will amend primary legislation. It does not impact other instruments, and as such no wider consolidation is required or being done.

10. Consultation outcome

10.1 No formal consultation was undertaken in relation to this instrument. However, the change relates to a factual assessment of country safety, which the Secretary of State has undertaken after having regard to information from appropriate sources and to all of the circumstances of the State, in line with section 80(4) of the 2002 Act.

11. Guidance

11.1 The Home Office has published guidance regarding section 80A of the Nationality, Immigration and Asylum Act 2002, available to staff and publicly on Gov.UK. It will be updated to support the introduction of section 80AA (including India and Georgia, as amended by this instrument) for when that provision is commenced.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because an Illegal Migration Act wide impact assessment has already been produced and is published on GOV.UK: Illegal Migration Bill: overarching documents - GOV.UK (www.gov.uk). Paragraph 78 of the economic impact assessment states that the processing of individuals who are assessed on their inadmissibility under the Act (this includes the duty to remove inadmissibility) is estimated as £18,000 per individual. These assessments already cover the impacts of the introduction of the section 80AA list, and the power to amend this list. It is considered these existing assessments adequately cover the addition of a country/countries to this list as proposed by this instrument. As noted above, section 59 of the Illegal Migration Act has yet to be commenced. As such, the five countries that Parliament added to the s80AA list through the Illegal Migration Act has not yet taken effect (as well as making human rights claims inadmissible). With this instrument, the Government intends to extend that list by adding India and Georgia. Subject to this Statutory Instrument, when section 59 is commenced, it will, for the first time, include the five new countries introduced through the Illegal Migration Act and the two additional countries contained in this instrument.

12.4 As set out in those impact assessments (Economic Impact Assessment: p1, 3, 5, 8-11, 21, 23-25, 29, Equality Impact Assessment: p1, 2, 5, 6, 9, Child's Rights Impact Assessment p1-4, 6-7, 9-12, 17-19, 21-22, 24), the objective of the Illegal Migration Act is to prevent illegal migration, remove those with no right to be here and protect the vulnerable. Removing those from the UK who come from safe countries is an important component of this objective, to ensure we focus our resources on those most in need of our support. In common with the Illegal Migration Act, this instrument will further support and bolster that objective. Under existing policy, unaccompanied asylum-seeking children can already be returned to their country of origin if they are a national of a country covered by the provisions under section 80A of the Nationality, Immigration and Asylum Act 2002. Once commenced, the expansion of this list will

expand the countries to which a person that is subject to the duty to remove may be removed to where they have made a protection claim. It will also expand the nationalities whose protection claims will be declared inadmissible under section 80A inadmissibility once the provisions to expand section 80A are commenced.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is for the Secretary of State to regularly review and assess the durable safety of countries in order to determine whether it is appropriate for them to be included or not included in the list at section 80AA(1) of the 2002Act.

15. Contact

15.1 Nick Wale, policy lead at the Home Office, Telephone: 07867 351967 or email: Nick.Wale@homeoffice.gov.uk, can be contacted with any queries regarding the instrument.

15.2 Miv Elimelech, Deputy Director for the Asylum and Protection Unit, Migration and Borders Group, at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Minister Jenrick at the Home Office can confirm that this Explanatory Memorandum meets the required standard.