

Submission on the Draft Nationality, Immigration and Asylum Act 2002 (Amendment of List of Safe States) Regulations 2024 with government response

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Evidence to the Secondary Legislation Scrutiny Committee for its consideration of the Draft Nationality, Immigration and Asylum Act 2002 (Amendment of List of Safe States) Regulations 2024

Introduction

1. The Immigration Law Practitioners' Association ('ILPA') is a professional association and registered charity, the majority of whose members are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics, non-governmental organisations and individuals with a substantial interest in the law are also members. ILPA exists to promote and improve advice and representation in immigration, asylum and nationality law, to act as an information and knowledge resource for members of the immigration law profession, and to help ensure a fair and human rights-based immigration and asylum system. ILPA is represented on numerous government, official, and non-governmental advisory groups and regularly provides evidence to parliamentary and official inquiries.
2. We ask that the Secondary Legislation Scrutiny Committee draw the Draft Nationality, Immigration and Asylum Act 2002 (Amendment of List of Safe States) Regulations 2024 ('the Draft Regulations'), laid on 8 November 2023, to the special attention of the House, on the following bases:
 - i. that the statutory instrument is politically or legally important or gives rise to issues of public policy likely to be of interest to the House;
 - ii. that there appear to be inadequacies in the consultation process which relates to the instrument;
 - iii. that it may imperfectly achieve its policy objectives; and
 - iv. that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument's policy objective and intended implementation.

Background

3. The Draft Regulations seek to amend section 80AA(1) (Safe States for the purposes of section 80A) of the Nationality, Immigration and Asylum Act 2002 ('the 2002 Act'), by adding Georgia and India to the list of "Safe States".
4. It is worth noting that section 59 of the Illegal Migration Act 2023 ('the 2023 Act') has not been commenced, other than for the purpose of making regulations. This is made clear in regulation

2(c) of [The Illegal Migration Act 2023 \(Commencement No. 1\) Regulations 2023](#). Therefore, its amendments to section 80A of the 2002 Act and its insertion of section 80AA into the 2002 Act are not in force, at the time of writing.

Issue 1: The Regulations are politically and legally important, and raise public policy issues

5. During its passage through Parliament, neither House considered the safety or adequacy of the 2023 Act's mechanisms in relation to India or Georgia. It was not proposed, at that time, that Georgia and India were "Safe States". By contrast, the inclusion of Albania on the list of "Safe States" was heavily debated during the passage of the Bill,¹ and its removal was recommended by the Joint Committee on Human Rights (see §161 of its [report](#)).
6. In these circumstances, of more limited legislative scrutiny, it is imperative that the House pay special attention to the proposal in the Draft Regulations to add Georgia and India to the list of "Safe States". As is explained in the course of these submissions, the addition of India and Georgia to the list of "Safe States" is politically and legally important. It also gives rise to issues of public policy likely to be of interest to the House.

Issue 2: Inadequacies in the consultation process and/or insufficient information for scrutiny

7. The test for adding "Safe States" is detailed in subsection 59(3) of the 2023 Act:

(3) The Secretary of State may add a State to the list only if satisfied that—

 - (a) there is in general in that State no serious risk of persecution of nationals of that State, and*
 - (a) removal to that State of nationals of that State will not in general contravene the United Kingdom's obligations under the Human Rights Convention.*
8. Given that the criteria are vague and appear on their face to be subjective,² the House should intensely scrutinise the Home Secretary's proposals to add two "Safe States".
9. Moreover, subsection 59(4) details the matters to which the Home Secretary must have regard:

(4) In deciding whether the statements in subsection (3)(a) and (b) are true of a State, the Secretary of State—

¹ For example, see Baroness Lister's Amendment 128A during Committee Stage in the House of Lords.

² The JCHR, for example, recommended at §161 of its [report](#) that it be amended to 'include criteria for designating countries as 'safe' which is based on strict and objective criteria based on reliable information, which includes, at a minimum, that: designated states must have signed and ratified the core UN human rights treaties as well as the Refugee Convention; that individuals must have access to a fair and effective asylum system and to free legal advice and representation; that states must have adequate domestic human rights laws and an effective and accessible justice system.'

- (a) must have regard to all the circumstances of the State (including its laws and how they are applied), and*
- (b) must have regard to information from any appropriate source (including member States and international organisations).*

10. We would ask that the Secondary Legislation Scrutiny Committee enquire how the Home Secretary has complied with the statutory duty to have regard to *all* the circumstances of Georgia and India and information from *any* appropriate source. What circumstances and information, if any, have been taken into account? If so, are the sources referenced reliable, up-to-date, and objective?
11. This information is vital for parliamentary scrutiny of the Draft Regulations.
12. It is extremely difficult to ascertain on what basis the Home Secretary has exercised the power in section 59(3) and discharged the statutory obligation in section 59(4), given that, as the Explanatory Note states, 'A separate impact assessment has not been produced for this instrument.' The Explanatory Note cross-refers to the [Impact Assessment](#) (No. HO 0438), but nowhere in that Impact Assessment is there any mention of either India, Georgia, or their safety. The Explanatory Memorandum states only at §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)*' and at §7.5, '*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.*' There is no explanation of why or how the Home Secretary has come to this conclusion. §10.1 of the Explanatory Memorandum confirms that '*No formal consultation was undertaken in relation to this instrument*'.
13. The most recent US Department of State reports for each of India and Georgia do not put forward a situation of general safety in each country.
14. The 'Executive Summary' of the US Department of State's 2022 [Country Report on Human Rights Practices: Georgia](#) states:

'Significant human rights issues included credible reports of: torture or inhuman, cruel, or degrading treatment; arbitrary arrest or incarcerations; serious problems with the independence of the judiciary, along with investigations and prosecutions widely considered to be politically motivated; arbitrary or unlawful interference with privacy; serious restrictions on freedom of expression and media, including violence and threats of violence against journalists; substantial interference with the freedom of peaceful assembly and freedom of association; refoulement; and crimes involving violence or

threats of violence targeting lesbian, gay, bisexual, transgender, queer, and intersex persons and activists.

The government took steps to investigate some officials for human rights abuses, but impunity remained a problem. The government's failure to credibly investigate and prosecute the organizers of July 2021 violence in advance of the Pride March resulted in impunity for those abuses. Lack of accountability also continued for the inappropriate police use of force against journalists and protesters during June 2019 demonstrations and the 2017 abduction and rendition from the country of Azerbaijani journalist and activist Afgan Mukhtarli.

Russian-occupied regions of Abkhazia and South Ossetia remained outside central government control, and de facto authorities were supported by Russian forces. The cessation of hostilities from 2008 remained in effect, but Russian guards restricted the movement of local populations. Significant human rights issues in the regions included credible reports of unlawful detentions; restrictions on movement, especially of ethnic Georgians; and restrictions on the ability of ethnic Georgians to own property or register businesses and to receive education in their native language. While there was little official information on the human rights and humanitarian situation in South Ossetia, de facto authorities refused to permit most ethnic Georgians driven out by the 2008 conflict to return to their homes there. De facto authorities did not allow most international organizations regular access to South Ossetia to provide humanitarian assistance. Russian "borderization" of the administrative boundary lines continued, further restricting movement and separating residents from their communities and livelihoods. Russian and de facto authorities in both regions committed abuses with impunity.'

15. The 'Executive Summary' of the US Department of State's 2022 Country [Report](#) on Human Rights Practices: India states:

'Significant human rights issues included credible reports of: unlawful and arbitrary killings, including extrajudicial killings by the government or its agents; torture or cruel, inhuman, or degrading treatment or punishment by police and prison officials; harsh and life-threatening prison conditions; arbitrary arrest and detention; political prisoners or detainees; arbitrary or unlawful interference with privacy; restrictions on freedom of expression and media, including violence or threats of violence, unjustified arrests or prosecutions of journalists, and enforcement of or threat to enforce criminal libel laws to limit expression; restrictions on internet freedom; interference with the freedom of peaceful assembly and freedom of association; restrictions on freedom of movement and on the right to leave the country; refoulement of refugees; serious government corruption; harassment of domestic and international human rights organizations; lack of investigation of and accountability for gender-based violence, including domestic and

intimate partner violence, sexual violence, workplace violence, child, early, and forced marriage, femicide, and other forms of such violence; crimes involving violence or threats of violence targeting members of national/racial/ethnic and minority groups based on religious affiliation, social status or sexual orientation; crimes involving violence or threats of violence targeting lesbian, gay, bisexual, transgender, queer, and intersex persons; and existence of forced and compulsory labor.

A lack of accountability for official misconduct persisted at all levels of government, contributing to widespread impunity. Lax enforcement, a shortage of trained police officers, and an overburdened and underresourced court system contributed to a low number of convictions.

Terrorists in Jammu and Kashmir, northeastern states, and Maoist terrorism-affected areas committed serious abuses, including killings and torture of armed forces personnel, police, government officials, and civilians; kidnapping; and recruitment and use of child soldiers.'

16. The Home Office's own Country Policy and Information [Note](#) (CPIN) *India: Actors of protection* (version 2.0, June 2023) states:

'2.1.1 In general, the state is both willing and able to offer sufficient protection to persons fearing non-state actors. Protection may not be available in conflict areas where armed insurgent or terrorist groups are active. [...]

2.1.5 Police effectiveness and conduct varies from state to state, although there have been improvements in police numbers in recent years, it is undermined by inadequate training and equipment, limited resources, and corruption. Police investigation can be obstructed by some police officers refusing to register victim's complaints, insufficient training, outdated forensic and cyber infrastructure. Underprivileged groups are affected by limited enforcement of protective laws (see Capabilities of the security forces).

2.1.6 The law prohibits arbitrary arrest and detention, however, incidents of both were reported in 2022, although there is no data on the number of times these occurred. Human rights abuses including rape, torture, and deaths in custody are reported to be widespread and conducted with impunity. Excessive force by security forces in areas of conflict are also reported, including extra-judicial killings, rape, torture, arbitrary detention, kidnappings and destruction of homes (see Capabilities of the security forces – Human rights abuses).

2.1.7 There are legal remedies for severe police misconduct and corruption, although some victims may be reluctant to report police violations. [...]

2.1.8 Whilst there is, in general a functioning independent judicial system, including public trials, presumption of innocence and free legal counsel, corruption within the judiciary is reportedly prevalent. The effectiveness of the judiciary is also limited by understaffing, causing severe delays to adjudication and a backlog of cases, particularly affecting marginalised, poor and vulnerable groups.'

17. There is also, for example, established Country Guidance from the Upper Tribunal in *AR and NH (lesbians) India CG [2016] UKUT 00066 (IAC)*, which states in its headnote:

'(2) A risk of persecution or serious harm for a lesbian woman in India, where it exists, arises from her family members, and the extent of such risk, and whether it extends beyond the home area, is a question of fact in each case.

(3) The risk of persecution or serious harm is higher for uneducated lower class lesbian women in rural areas, who remain under the control of their family members and may not be permitted to leave the home to continue meeting their lesbian partners.

(4) Where family members are hostile to a lesbian woman's sexuality, they may reject her completely and sometimes formally renounce her as a member of that family. In such a case, whether relocation to a city is unduly harsh will be a question of fact, depending on the ability of such a lesbian woman to survive economically away from her family and social networks.'

18. In light of these sources, it appears doubtful that the Home Secretary has properly carried out the statutory duties contained in section 59(4) of the 2023 Act. We would urge the Home Secretary to undertake further research and consultation, in addition to publishing the circumstances and information to which regard was had.

Issue 3: Inadmissibility of human rights claims and policy objectives

19. Section 59(2) of the 2023 Act (once commenced) would make far-reaching amendments to section 80A of the 2002 Act. Absent 'exceptional circumstances', it would:
 - i) extend the current inadmissibility process for asylum claims from EU nationals, in section 80A of the 2002 Act, to cover other nationalities (Albania, Iceland, Liechtenstein, Norway and Switzerland);
 - ii) make human rights claims regarding entry or removal from the United Kingdom inadmissible, and
 - iii) provide no right of appeal.
20. The Draft Regulations would extend this inadmissibility regime to Indian and Georgian nationals.

21. The Draft Regulations would bar almost all, if not all, Indian and Georgian nationals from making admissible human rights claims. Section 66, by reference to section 4(15) of the 2023 Act, defines a “human rights claim” as having the meaning given by section 113(1) of the 2002 Act. Section 113(1) of the 2002 Act, in turn states, where relevant:

“human rights claim” means a claim made by a person to the Secretary of State at a place designated by the Secretary of State that to remove the person from or require him to leave the United Kingdom or to refuse him entry into the United Kingdom would be unlawful under section 6 of the Human Rights Act 1998 (c. 42) (public authority not to act contrary to Convention).

22. Many human rights claims, unlike protection claims, are based on a person’s connection to the UK, such as having a partner or children in the UK, dependency on a person in the UK, or lack of ties to the country of proposed return.
23. For example, the Home Office’s ‘Rights of Appeal’ [Guidance](#) (version 14.0, published 14 June 2023), under the heading ‘How to identify a human rights claim’, states that ‘applications listed in this section and made under the Immigration Rules are human rights applications’ and lists the following applications:

- Paragraph 276B (long residence)
- Paragraphs 276ADE(1) or 276DE (private life)
- Paragraphs 276U and 276AA (partner or child of a member of HM Forces)
- Paragraphs 276AD and 276AG (partner or child of a member of HM Forces), where:
 - the sponsor is a foreign or Commonwealth member of HM Forces and has at least 4 years’ reckonable service in HM Forces at the date of application
- Part 8 of these Rules (family members) where:
 - the sponsor is present and settled in the UK or has refugee or humanitarian protection in the UK, not paragraphs 319AA to 319J (points-based system (PBS) dependents), paragraphs 284, 287, 295D or 295G (sponsor granted settlement as a PBS Migrant)
- Part 11 (asylum)
- Part 4 or Part 7 of Appendix Armed Forces (partner or child of a member of HM Forces) where:
 - the sponsor is a British Citizen or has at least 4 years’ reckonable service in HM Forces at the date of application
- Appendix FM (family members), not: section BPILR (bereavement) or section DVILR (domestic violence)

Example 1: Family Reunification

What would the Draft Regulations mean for a Georgian child lawfully residing in Georgia wishing to be reunited with their Georgian parent, a refugee, who is lawfully residing in the UK?

If an application for family reunion is made on the basis that refusing the child entry to the United Kingdom would be unlawful under section 6 of the Human Rights Act 1998, because it would disproportionately interfere with the parent's right to respect for private and family life under Article 8 of the European Convention of Human Rights, the child's claim could not be considered under the Immigration Rules and would be declared inadmissible under section 80A of the 2002 Act (once in force) unless 'exceptional circumstances' apply. The child would have no right of appeal against that inadmissibility declaration.

It would appear that the Home Secretary would not ordinarily consider the claim, and thus the extent to which family life is effectively ruptured, ties of the Georgian parent to the UK, whether there are insurmountable obstacles to the family living together in Georgia (given the parent is a refugee), and the child's best interests.

Example 2: Leave to remain for spouse of British citizen

What would the Draft Regulations mean for an Indian national who wishes to stay with her husband, a British citizen, in the United Kingdom?

If she has leave to remain as a spouse and makes an extension application for further leave to remain as a spouse under Appendix FM to the Rules and/or on the basis that removal would disproportionately interfere with their rights to private and family life under Article 8 of the European Convention of Human Rights, absent 'exceptional circumstances' their claim could not be considered under the Immigration Rules and would be declared inadmissible, without any right of appeal. If she has no other basis on which to remain in the United Kingdom, the Indian national is likely to overstay any existing leave they have, become subject to the hostile environment, and be liable to removal to India. In order to continue their family life, her British citizen husband will likely have to leave the United Kingdom to try to live with his wife in another country.

Example 3: Long Residence Application

What would the Draft Regulations mean for an Indian or Georgian national who has spent the last ten years studying, working and building a business in the United Kingdom?

If an Indian or Georgian individual had built up 10 years of continuous lawful residence in the United Kingdom and was seeking to settle on that basis, unless there were 'exceptional circumstances', it would appear that their claim also could not be considered under the Immigration Rules and would be declared inadmissible, without any right of appeal.

24. The above examples merely relate to Article 8; however, individuals may also have claims arising under the non-derogable rights contained in Articles 2, 3 and 4 of the European Convention on Human Rights.
25. Imposing a near-blanket ban on consideration of human rights claims, due to the perceived 'general' safety of India or Georgia, is likely to cause breaches of individual human rights. The designation of a country as generally safe does not guarantee safety for all individuals. Moreover, 'exceptional circumstances' arising the alleged safety of the country of proposed return is simply the incorrect test. Before accepting the addition of further countries to the list of "Safe States", we urge the House to consider the impact of preventing individuals from making a protection or human rights claim which must be considered on its merits in order to guard against the risk of *refoulement* and breaches of human rights.
26. These Regulations will strip more than a billion people³ of their ability to make admissible human rights applications. Nowhere does the Explanatory Memorandum acknowledge that this is the impact of the Regulations if section 59 is fully commenced.
27. The purpose of the 2023 Act, as stated in section 1(1), is to '*prevent and deter unlawful migration, and in particular migration by unsafe and illegal routes, by requiring the removal from the United Kingdom of certain persons who enter or arrive in the United Kingdom in breach of immigration control*'. That purpose is not advanced by rendering human rights claims of nationals of "Safe States", who have never undertaken "unlawful migration" and are making human rights claims to obtain or maintain lawful status, inadmissible.
28. Unlike inadmissibility introduced by section 5 of the 2023 Act, inadmissibility under the amended section 80A of the 2002 Act would apply regardless of whether an individual:
 - i) Entered with the appropriate clearance, authorisation or permission;
 - ii) Has leave to enter or remain; and
 - iii) Came directly from a country in which the person's life and liberty were threatened by reason of their race, religion, nationality, membership of a particular social group or political opinion.
29. Individuals are singled out by their nationality, rather than by their behaviour.

³ United Nations, 'India to overtake China as world's most populous country in April 2023, United Nations projects' (24 April 2023) <https://www.un.org/en/desa/india-overtake-china-world-most-populous-country-april-2023-united-nations-projects#:~:text=Smith%20Mehta%20Funsplash.-,India%20to%20overtake%20China%20as%20world's%20most%20populous%20country%20in,the%20world's%20most%20populous%20country> accessed 21 November 2023. India's population stood at over 1.4 billion people, according to the United Nations forecast.

30. The Explanatory Memorandum refers to the Protocol on Asylum for Nationals of Member States ('the Spanish Protocol'), which permits asylum claims from EU nationals to be considered by other EU countries only in very limited circumstances to avoid consideration of unfounded asylum claims. However, the Spanish Protocol relates solely to asylum matters. It does not prohibit consideration of human rights claims, as the amendments to section 80A seek to do.
31. There has been no suggestion that human rights claims by Indian and Georgian nationals are unfounded or abusive. Rather, the Home Office's own [statistics](#) on 'Why do people come to the UK? For family reasons', updated 14 November 2023, shows that in the year ended 2022, India was the second highest nationality for family-related visas: 5,500 visas were granted in the year ending June 2023, which constituted a 131% increase on the 2,381 visas granted in the year ending June 2022. From 1 January 2022 to June 2023, only 5 of 89 family-related visas were refused to Georgian nationals (see [Entry clearance visa applications and outcomes detailed datasets](#), year ending June 2023, Data_Vis_D02), constituting a 94% grant rate.
32. It is unclear from the explanatory material what legitimate policy objective will be advanced by rendering all human rights claims of Georgian and Indian nationals inadmissible. However, it is clear that these Draft Regulations will imperfectly achieve the policy objective of preventing and deterring 'unlawful migration', in particular 'migration by unsafe and illegal routes'.

Issue 4: Removal under the Illegal Migration Act 2023

33. The addition of India and Georgia to this section 80AA "Safe State" list would mean that, in conjunction with section 6 of the 2023 Act, Indian and Georgian nationals, who meet the four conditions in section 2 of the 2023 Act, may be removed to their own country of nationality or identity (as it would be deemed safe by section 80AA(1) of the 2002 Act) or to a third country or territory listed in Schedule 1 to the 2023 Act (if there is reason to believe they would be admitted). There is a duty to make arrangements for removal, unless the individual is an unaccompanied child in which case it is a power that becomes a duty on their 18th birthday.
34. Section 5(1) of the 2023 Act is clear that that the duty or power to make arrangements for removal would apply regardless of whether—
 - (a) *the person makes a protection claim,*
 - (b) *the person makes a human rights claim,*
 - (c) *the person claims to be a victim of slavery or a victim of human trafficking as defined by regulations made by the Secretary of State under section 69 of the Nationality and Borders Act 2022, or*
 - (d) *the person makes an application for judicial review in relation to their removal from the United Kingdom under this Act.*

35. The only carve out is if the Georgian or Indian national makes a protection claim or a human rights claim and there are ‘exceptional circumstances’ which prevent their removal to Georgia or India, respectively. ‘Exceptional circumstances’ are listed in section 6(5) of the 2023 Act to include:
- (a) in a case where P is a national of a country that is a signatory to the Human Rights Convention, or has obtained a passport or other document of identity in such a country, where that country is derogating from any of its obligations under the Human Rights Convention in accordance with Article 15 of the Convention;*
 - (b) in a case where P is a national of a member State, or has obtained a passport or other document of identity in a member State, where the member State is the subject of a proposal initiated in accordance with the procedure referred to in Article 7(1) of the Treaty on European Union and—*
 - (i) the proposal has yet to be determined by the Council of the European Union or (as the case may be) the European Council,*
 - (ii) the Council of the European Union has determined, in accordance with Article 7(1), that there is a clear risk of a serious breach by the member State of the values referred to in Article 2 of the Treaty, or*
 - (iii) the European Council has determined, in accordance with Article 7(2), the existence of a serious and persistent breach by the member State of the values referred to in Article 2 of the Treaty.*
36. As above, these exceptional circumstances are repeated in the amendments to section 80A of the 2002 Act, which provides a carve out ‘if there are exceptional circumstances as a result of which the Secretary of State considers’ that an asylum or human rights claim made by a national of a Safe State ‘ought to be considered’.
37. India is not a signatory to the European Convention on Human Rights, the 1951 Refugee Convention or its 1967 Protocol. At the time of writing, neither Georgia nor India are member States of the European Union. Therefore, it is entirely unclear what would constitute ‘exceptional circumstances’, particularly in relation to India. It was the view of the Joint Committee on Human Rights in their [report](#) at §157 that the ‘exceptional circumstances’ test ‘*is not a sufficient safeguard given the subjective nature of this threshold and the inevitable high bar*’ and that there is, ‘*therefore, a real possibility that persons will be returned to their countries of origin despite facing a real risk that their Convention rights will be breached*’.

38. In its [Legal Observations](#) on the Illegal Migration Bill, of 2 May 2023, at §68, UNHCR similarly stated that it *‘is concerned that the “exceptional circumstances” provisions that would allow a protection or human rights claim by a person from a Section 80AA country to be considered are too restrictive to protect individuals who may be at risk even though they come from a country that is otherwise considered safe. This is because UK courts set a very high threshold for the consideration of EU asylum claims under the former immigration rules that gave effect to the Spanish Protocol: there must be “compelling reasons to believe that there is a clear risk that [an asylum-seeker] will be liable to persecution in the country of origin” and “plainly cogent evidence (typically of some systemic default)”’.*⁴ These do not appear to permit an individualized assessment.’
39. This makes the list of “Safe States” fundamentally different to the mechanism in section 94 of the 2002 Act, which contains a list of States that includes India, but not Georgia. Section 94(3) crucially states that the Home Secretary shall certify a claim as clearly unfounded, ‘unless satisfied that it is not clearly unfounded’, a decision which is then subject to anxious scrutiny in light of the very high threshold for certification.
40. In comparison, under the 2023 Act, there is extremely limited judicial oversight of removal of a person to their country of nationality or identity, if it is designated as a “Safe State”. If the person is removed to their country of origin, i.e. an Indian national is removed to India or a Georgian national to Georgia, under the 2023 Act, their only suspensive recourse to challenge would be a removal conditions suspensive claim on the basis that there is compelling evidence that they do not meet the four conditions in section 2 of the 2023 Act.
41. An Indian national and a Georgian national would have no ability to make a serious harm condition suspensive claim, on the basis that they would face a real, imminent and foreseeable risk of serious and irreversible harm before any application for judicial review was exhausted,⁵ if removed to India or Georgia, respectively. Any human rights claim or protection claim they make regarding their removal to India or Georgia, would be declared inadmissible by virtue of section 5 of the 2023 Act.
42. Therefore, before an Indian or Georgian individual is removed, neither the Home Office nor any court or tribunal would, under the 2023 Act, be required to consider, for example, whether an individual would face a real risk of treatment contrary to Article 3 of the European Convention on Human Rights, the absolute right not to be subjected to torture or to inhuman or degrading treatment or punishment, and/or a risk of *refoulement*, if returned to India or Georgia, respectively.

⁴ UNHCR referenced *ZV (Lithuania) v Secretary of State for the Home Department* [2021] EWCA Civ 1196, para. 21, 39.

⁵ The requirements to meet the serious harm condition are further detailed in section 39 of the 2023 Act.

43. As confirmed by the Supreme Court in *AAA (Syria) & Ors v Secretary of State of the Home Department* [2023] UKSC 42, the ‘principle of non-refoulement is therefore given effect not only by the ECHR but also by other international conventions to which the United Kingdom is party’,⁶ listing Article 33(1) of the Refugee Convention, Article 3(1) of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, Articles 2, 6 and 7 of the United Nations International Covenant on Civil and Political Rights of 1966 and Article 3 of the European Convention on Human Rights. The Supreme Court suggested that it may also form ‘part of customary international law.’⁷ In addition, the Supreme Court noted the principle ‘has also been given effect in our domestic law by a number of statutes enacted by Parliament’,⁸ including section 2 of the Asylum and Immigration Appeals Act 1993, section 6 of the Human Rights Act 1998, section 82(1) of the 2002 Act read together with section 84(1) of that Act, and paragraph 17 of Schedule 3 to the Asylum and Immigration (Treatment of Claimants etc) Act 2004.
44. There is a duty upon the United Kingdom not to remove an individual to a state where there are substantial grounds for believing that they would be at real risk of such ill-treatment. However, even if a court or tribunal did reach such a conclusion, the ouster clause in section 54(3) of the 2023 Act states that a ‘court or tribunal may not grant an interim remedy that prevents or delays, or that has the effect of preventing or delaying, the removal of the person from the United Kingdom’. The ability of courts and tribunals to have regard to Rule 39 interim measures indicated by the European Court of Human Rights is also subject to Ministerial determination, by virtue of section 55 of the 2023 Act.
45. Nevertheless, the Home Office’s own Country Policy Information Notes accept concerning gaps in safety for certain individuals, even if they allege that there is no ‘general’ risk of persecution.
46. For example, in the ‘Georgia: Political parties and affiliation’ [CPIN](#) (version 1.0, May 2021) it is stated at §2.4.11 that ‘High-profile government opponents and managers of media channels opposed to the government may be subjected to politically-motivated prosecution and detention with a politically-biased judiciary’. At §2.5.3-2.5.4 it is stated that ‘investigations into abuse by law enforcement officials and security forces showed limited effectiveness and impunity remained an issue’ and concludes that ‘[w]here the person has a well-founded fear of persecution from the state they will not, in general, be able to avail themselves of the protection of the authorities’.

⁶ §26.

⁷ §25.

⁸ §27

47. In *BK (Risk – Adultery -PSG) India CG* [2002] UKIAT 03387 it was found that women from rural India who had committed adultery could form part of a particular social group. The Home Office's [CPIN](#) 'Women fearing gender-based violence, India, November 2022', accepts at §2.3.3 that '[s]ince the BK case was heard, the position of women has not significantly changed or deteriorated. Therefore, there are not 'very strong grounds supported by cogent evidence' to justify a departure from the BK case.' The CPIN goes on to state, '[w]hile many women face sexual and gender-based violence, predominantly in a domestic context, in general, women are not at real risk of persecution or serious harm from non-state actors', before listing the following:

'2.4.3 Some women may be at more risk of persecution or serious harm, including those who are seen to have transgressed social, cultural and religious norms, or are single and living alone, or belong to a Scheduled Caste or Tribe. [...]

2.4.5 An Indian woman's ability to exercise her social, economic and human rights varies according to her social position in terms of education, economic independence, religion, location (urban or rural) caste and marital status [...]

2.4.6 Gender-based violence against women and girls in India is widespread, particularly in the north, compounded by patriarchal attitudes and gender stereotypes. In the 2019-2021 National Family Health Survey (NHFS-5) of 636,699 households throughout India, 44% of men stated they agreed with one or more reasons for 'wife-beating'. A study undertaken by the Pew Research Centre found that nearly nine-in-ten Indians (87%) completely or mostly agreed with the notion that "a wife must always obey her husband." [...]

2.4.7 According to the National Crime Records Bureau (NCRB), 428,278 cases of crime against women were registered during 2021, an increase of 15.3% since 2020 (371,503 cases). [...]

2.4.8 Practices such as forced or child marriages, dowry-related deaths, domestic violence, rape, acid attacks, 'honour', unsafe gender-selective abortions, sexual harassment, coerced and involuntary sterilization and accusations of witchcraft continue to be practised despite laws prohibiting them [...]

2.4.9 Women from minority groups, including Dalits (who are at the bottom of the caste system) often face multiple and intersecting forms of discrimination and violence because of their gender combined with their low status'.

48. Similarly, the Home Office's [CPIN](#) 'Religious minorities and scheduled castes and tribes, India, November 2021' from §2.4.7 to §2.4.39 lists a range of State and societal mis-treatment of

ethnic minorities and scheduled castes. It further states at §2.4.42 that persons ‘entering into inter-faith marriages may, in some cases, be subject to disapproval from their families, discrimination, societal exclusion or family or communal violence’. The CPIN also notes failings in the protection from the State:

‘2.5.3 Police effectiveness and conduct varies from state to state, undermined by inadequate training and equipment, limited resources, political influence and corruption. Police investigation can be seriously hampered by some police officers refusing to register victims’ complaints, poor quality of investigations, insufficient training and legal knowledge, inadequate and outdated forensic and cyber infrastructure, and a lack of public trust. Their investigations may also be affected by bias in relation to class, caste, ethnicity and religion of the victim or offender or in relation to down-playing crimes in certain areas of the country. There continue to be reports of police intimidating, harassing, and extorting some members of religious minorities and Dalits. Some sources have claimed that there is an absence of police protection for religious minorities while some victims may be reluctant to report violations due to fear of retribution (see CPIN India: Actors of protection, State treatment of religious minorities).

2.5.4 There are isolated examples of state discrimination against religious minorities and Dalits, particularly in the wake of large-scale protesting or in cases of bovine slaughter and religious conversion, including police hostility and harassment. The police are sometimes unwilling to investigate and pursue those responsible for committing acts of violence against religious minorities and Dalits and complainants can be subject to victimisation by the police. Whilst there are reports of police mistreatment of members of religious minorities and Dalits, there is no generalised risk of state mistreatment or inaction facing all members.’

49. Removal of Indian and Georgian nationals under the Illegal Migration Act 2023, in a manner that would risk breaching human rights and *refoulement*, is clearly politically and legally important and gives rise to issues of public policy likely to be of interest to the House.
50. For the above reasons, we ask for careful scrutiny and recommend that each House does not approve the Draft Regulations.

Immigration Law Practitioners’ Association
(ILPA)

22 November 2023

Response to the submission from the Home Office

Q1: Regarding the process of deciding that Georgia and India are ‘safe states’ for these purposes. Anything you could say in this area would be helpful. For example, what factors were considered?

A1: The rationale underpinning the proposed designation of India and Georgia is to tackle unfounded protection and human rights claims. Whilst the Government remains committed to providing protection to those fleeing from persecution, it also has a responsibility to ensure that our asylum system is not taken advantage of by people from safe countries. In deciding to seek to designate India and Georgia, the Home Secretary has reviewed the nationalities that generate high volumes of asylum intake, including those arriving illegally via small boats.

In line with section 80AA(3) and (4) of the Nationality, Immigration and Asylum Act (NIAA) 2002, the Home Secretary is satisfied that India and Georgia are safe States. The Home Secretary reached this conclusion following careful analysis of a wide range of publicly available evidence about the countries, including their respect for the rule of law and human rights from various reliable sources. These include the Foreign, Commonwealth and Development Office, other western governments, and the Georgian and India governments; the UN and its agencies; international and domestic human rights groups; academia; and international and domestic media.

India has been designated under section 94 NIAA 2002 since 2005, which is based on similar wording in the test at section 80AA(3) and section 80AA(4). We have therefore long considered India to be a generally safe State. Georgia is not designated under section 94 NIAA 2002, however this was a policy and practical decision because we received relatively few claims from that country until recently.

Q2: Do you have a planned commencement date for the relevant sections of the 2002 Act?

A2: We have already begun implementing measures within the Act (e.g. detention powers, launching a consultation on safe and legal routes). Commencement of wider measures in the Act, including section 59, will be implemented in due course.

Q3: Why does the number of asylum claims from a country affect whether it is, or is not, a “safe state”?

A3: The decision on whether a country is safe for the purpose of inclusion in the list at section 80AA(1) of the Nationality, Immigration and Asylum Act 2002 must be made according to the criteria set out in section 80AA(3) and (4) (these provisions are as inserted by section 59 of the Illegal Migration Act 2023). The number of asylum claims from nationals of a particular country is not relevant to considerations of safety. However, in order to protect the asylum system and the UK taxpayer from unfounded claims made by individuals from safe countries, Ministers will inevitably wish to give particular consideration to which countries’ nationals claim asylum in higher numbers, especially where there is an upward trend. There are safe countries which are not currently included on the s80AA(1) list. That is not because we don’t think they’re safe, but because their nationals make few claims, and so examination of whether it would be appropriate to designate them safe for these purposes has not been undertaken at this time.

Q4: Of the asylum claims from these countries how many were refused and how many accepted?

A4: The latest figures (to September 2023) for asylum claims and decisions in respect of nationals of India and Georgia, are below:

Georgia	YE Sep 22	YE Sep 23
Applications	1,150	1,340
Decisions	21	43
of which, Granted	6	7
Grant rate	29%	16%
Withdrawals	73	382
Grant rate, accounting for withdrawals	6%	2%

India	YE Sep 22	YE Sep 23
Applications	2,329	4,710
Decisions	234	528
of which, Granted	10	39
Grant rate	4%	7%
Withdrawals	702	1,552
Grant rate, accounting for withdrawals	1%	2%

Notes:

- *Main apps only.*
- *Application figures are based on application date. Initial decision figures are based on date of decision and do not necessarily relate to applications made in the same period. For example, a decision in YE Sept 2023 may relate to an application made in YE Sep 2022.*
- *Grants include grants of protection and alternative forms of leave (e.g. UASC leave, discretionary leave).*

Q5: In relation to Georgia, the Committee was aware of significant human rights concerns – particularly about freedom of expression for those critical of the government. Could you comment further on this concern and why the design to designate Georgia was nevertheless appropriate, please?

A5: We have reviewed relevant information and evidence from a wide range of reliable sources, including information around freedom of expression. However, we have not found the scale and extent of those concerns mean that the test at s.80AA(3) of the Illegal Migration Act (that there is in general in that State no serious risk of persecution of nationals of that State, and removal to that State of nationals of that State will not in general contravene the United Kingdom’s obligations under the Human Rights Convention (emphasis added)) is not met.

Q6: What “circumstances” of the two states (as per s59(4)(a)) have been considered, and precisely what sources have been consulted (59(4)(b) and how up to date are they?

A6: Our assessments are based on evidence taken from a wide range of reliable sources, including reputable media outlets; local, national and international organisations, including human rights organisations; and information from the Foreign, Commonwealth and Development Office.

Q7: Did those sources include the following, and if so how, in light of these, was the Secretary of State satisfied that the conditions in s59(3) of the Act were met?

- The United States’ 2022 Country Report on Human Rights Practices in Georgia, which reported that “significant human rights issues included credible reports of: torture or inhuman, cruel, or degrading treatment; arbitrary arrest or incarcerations; serious problems with the independence of the judiciary, along with investigations and prosecutions widely considered to be politically motivated; arbitrary or unlawful interference with privacy; serious restrictions on freedom of expression and media, including violence and threats of violence against journalists; substantial interference with the freedom of peaceful assembly and freedom of association; refoulement; and crimes involving violence or threats of violence targeting lesbian, gay, bisexual, transgender, queer, and intersex persons and activists”?
- The United States’ 2022 Country Report on Human Rights Practices in India, which reported that “Significant human rights issues included credible reports of: unlawful and arbitrary killings, including extrajudicial killings by the government or its agents; torture or cruel, inhuman, or degrading treatment or punishment by police and prison officials; harsh and life-threatening prison conditions; arbitrary arrest and detention; political prisoners or detainees; arbitrary or unlawful interference with privacy; restrictions on freedom of expression and media, including violence or threats of violence, unjustified arrests or prosecutions of journalists, and enforcement of or threat to enforce criminal libel laws to limit expression; restrictions on internet freedom; interference with the freedom of peaceful assembly and freedom of association; restrictions on freedom of movement and on the right to leave the country; refoulement of refugees; serious government corruption; harassment of domestic and international human rights organizations; lack of investigation of and accountability for gender-based violence, including domestic and intimate partner violence, sexual violence, workplace violence, child, early, and forced marriage, femicide, and other forms of such violence; crimes involving violence or threats of violence targeting members of national/racial/ethnic and minority groups based on religious affiliation, social status or sexual orientation; crimes involving violence or threats of violence targeting lesbian, gay, bisexual, transgender, queer, and intersex persons; and existence of forced and compulsory labor”.
- The Home Office’s own Country Note on India (June 2023), which states that “Human rights abuses including rape, torture, and deaths in custody are reported to be widespread and conducted with impunity. Excessive force by security forces in areas of conflict are also reported, including extra-judicial killings, rape, torture, arbitrary detention, kidnappings and destruction of homes”.
- The Home Office’s own Country Note on Georgia (May 2021), which states that “High-profile government opponents and managers of media channels opposed to the government may be subjected to politically-motivated prosecution and detention with a politically-biased judiciary”.

A7: Section 59(3) of the Illegal Migration Act inserts section 80AA into the Nationality, Immigration and Asylum Act 2002. The test it sets out (at s.80AA(3)) is explicitly one of generality. That there may

be isolated incidents reported does not mean that the test (there is in general in that State no serious risk of persecution of nationals of that State, and removal to that State of nationals of that State will not in general contravene the United Kingdom's obligations under the Human Rights Convention (emphasis added)) is not met. Selective highlighting of quotes may highlight worst case scenarios but are not necessarily reflective of the situation in general.

We have recently reviewed the Georgia CPIN, and it will shortly be updated.

Q8: The submission suggests that, in relation to what might constitute 'exceptional circumstances', the Act refers to the European Convention on Human Rights and/or membership of the European Union (s6(5)). Neither India nor Georgia are members of the EU and India is not a signatory to the ECHR, so the question arises of how exactly the exceptional circumstances test will be applied in these cases?

A8: Section 80A of the 2002 Act sets out some examples of what may constitute exceptional circumstances, but it does not set out an exhaustive list. There will be other exceptional circumstances which will apply on a case-by-case basis, to those who are nationals of countries which are EU member states and other states signatory to the ECHR, and to nationals of other countries. Policy guidance will be published in due course to set out how exceptional circumstances should be considered by caseworkers.

Q9: The figures suggest that a large number of asylum claims from nationals of these two countries are as yet undecided. At the point these Regulations become law, would those all immediately become inadmissible (barring exceptional circumstances) or does the law only apply to applications received after it is in force?

A9: Once these regulations become law, they will add Georgia and India to the S80AA list. Until such time as other provisions in the Illegal Migration Act that rely on the S80AA list are commenced, adding these countries to the S80AA list will have no practical effect. Commencement of the wider measures in the Illegal Migration Act, will be implemented in due course. The Government is considering the outcome of the Supreme Court's judgment on the Migration and Economic Development Partnership (MEDP) with Rwanda and its application to how and when the other Illegal Migration Act provisions will be commenced.

Q10: Does it follow that of the 2,490 claims made by Georgian nationals in the last two years, 1,971 have yet to be processed? (Applications minus decisions minus withdrawals). And on the same calculation for India, 4,023 out of 7,039 have not yet been processed?

A10: No, that can't be inferred from the figures provided, please refer to the notes included under the table. The decision figures are based on the date of decision in that period. They do not necessarily relate to applications made in the same period. For example, a decision in the YE Sep 2022 may relate to an application made in YE Sep 2021. We do publish linked data that follows a cohort of asylum applicants from application to final outcomes based on the year in which they submitted their asylum application (table Asy_D04, here: [Immigration system statistics data tables - GOV.UK \(www.gov.uk\)](#)), but the latest data relates to 2021.

14, 24 and 27 November 2023