

COUNTRY BRIEFING
NOVEMBER 2019

United Kingdom



INTRODUCTION

The Statelessness Index¹ is an online comparative tool that assesses European countries' laws, policies and practices on the protection of stateless people and the prevention and reduction of statelessness. The Index was developed and is maintained by the European Network on Statelessness (ENS)², a civil society alliance of over 140 organisations and individuals in 40 countries working to end statelessness and ensure that stateless people in Europe access their rights.

ENS worked with its members³ to research and compile comparative information on statelessness in the United Kingdom. This briefing summarises the findings on how UK law, policy and practice performs against international norms and good practice on the protection of stateless people and the prevention and reduction of statelessness. It covers five thematic areas – International and Regional Instruments, Stateless Population Data, Statelessness Determination and Status, Detention, and Prevention and Reduction – and makes a series of recommendations to the British Government for reform in priority areas.

Stateless people are not considered citizens by any state under the operation of its law. Statelessness is a legal anomaly that prevents more than 10 million men, women and children around the world - and more than half a million in Europe - from accessing fundamental civil, political, economic, cultural and social rights.

INTERNATIONAL AND REGIONAL INSTRUMENTS

Several international and regional treaties provide for the protection of stateless people and the prevention and reduction of statelessness. As a State party to most of these treaties, the UK has obligations to protect the right to a nationality and to prevent statelessness. Positively, the UK has signed and ratified both the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. However, the UK maintains several reservations to these treaties, and neither Convention has been fully incorporated into domestic law (treaties do not have direct effect in the UK legal system). For example, the UK's statelessness determination procedure (set out in Part 14 of the Immigration Rules) departs in some respects from the 1954 Convention and adds additional criteria to those outlined in the Convention in order for individuals to be granted leave to remain in the UK as a stateless person.

Further, the UK has reservations to the 1961 Convention, for example allowing for deprivation of nationality of a naturalised person on certain grounds. In 2014, deprivation of nationality was reintroduced into UK law in cases where a naturalised person 'acts in a manner which is seriously prejudicial to the vital interests of the Crown'. Further, under current British nationality law, some people have a form of British nationality with no right of abode in any country (including people with no other nationality).

The UK is not a party to several treaties relating to statelessness: the European Convention on Nationality, the Convention on the Avoidance of Statelessness in Relation to State Succession, and the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families.

[The British Government should consider withdrawing its reservations to the 1954 and 1961 Conventions and fully incorporating these Conventions into domestic law. The British Government should also consider acceding to other relevant international and regional instruments to which it is not yet a party.](#)



STATELESS POPULATION DATA

States should collect reliable quantitative and qualitative data on statelessness and adopt and strengthen measures to count stateless people on their territory.⁴ The availability of reliable data is linked to whether procedures to identify and determine statelessness exist. There are relatively few sources of accurate data on the stateless population in the UK. The UK's immigration statistics report the number of stateless people who apply for asylum and are granted some form of protection status other than stateless status (for example, 184 stateless people were granted asylum or other protection in 2017; 413 in 2016; and 502 in 2015). The UK immigration statistics also have categories for

‘other and unknown’, ‘Occupied Palestinian Territories’, and ‘Western Sahara’ (neither of the latter being recognised as states by the British Government).⁵ These figures may not be accurate, however, as statelessness cannot always be definitively assessed in the asylum context, and some people are attributed a nationality they do not have.

As of November 2019, published immigration statistics do not include outcomes for applications to remain in the UK as a stateless person, despite the Government having committed to publishing this data in early 2017. UNHCR reported in its Global Trends 2017 report that there are 97 stateless people in the UK,⁶ which is based on figures reported by the UK Government to UNHCR and reflects the number of people granted leave to remain in the UK as stateless persons. However, these figures do not include other important categories, including people who are stateless but not eligible for leave to remain under the Immigration Rules (for example because they have committed a criminal offence that bars them from being granted leave to remain), stateless people granted other status in the UK (for example, a work, study or spousal visa), or stateless people whose statelessness is as yet unrecognised, including children born in the UK but not registered as British citizens nor citizens of any other country.

The British Government should take concrete steps to improve the identification and recording of statelessness, by ensuring that all relevant officials are trained to accurately identify and record statelessness, harmonising and defining statistical categories, and including outcomes of applications for leave to remain in the UK as a stateless person in official published immigration statistics.



STATELESSNESS DETERMINATION AND STATUS

To provide the protection and rights enshrined in the 1954 Convention, including a residence permit and the right to work, study and facilitated naturalisation, State parties need to identify stateless people on their territory. UNHCR recommends that this is best fulfilled through a dedicated statelessness determination procedure.⁷ The UK introduced a formal statelessness determination procedure in 2013, through Part 14 of the Immigration Rules (changes to the Rules took effect on 6 April 2019).

The procedure falls short of standards set out in the UNHCR Handbook on the Protection of Stateless Persons in a number of areas. There is no statutory appeal against refusal (only the more limited remedy of judicial review) and there are significant barriers to accessing legal aid for statelessness applications in England and Wales. There are limitations on being granted a residence permit for reasons not found in the 1954 Convention, for example, committing relatively minor crimes of survival. In many cases, applicants face delays in obtaining a first administrative decision of more than a year. The applicant must prove they are not admissible to any country, and that they have ‘failed to establish’ a relevant nationality (requirements that are not in the 1954 Convention). Further, naturalisation is not facilitated for stateless people, who, like all others and without exceptions, must pay very high fees to naturalise. British citizenship application fees are currently £1,330 (€1,543) for adults and £1,012 (€1,174) for children.

The British Government should improve the statelessness determination procedure to comply with UNHCR Guidance and good practice. It should fulfil its obligations to stateless people under the 1954 Convention by improving procedural safeguards, including a statutory right of appeal and comprehensive access to legal aid for statelessness applications. Stateless people should also be granted a residence permit within a year of applying unless they are ineligible for reasons set out in the Convention; and naturalisation should be facilitated through appropriate fee reductions and waivers.



DETENTION

Stateless people face a heightened risk of arbitrary detention particularly where procedural safeguards to identify and determine statelessness and related barriers to removal are lacking.⁸ Rules and procedures in the UK contain some protections against arbitrary detention and some remedies to challenge detention are established in law and policy. However, there is no maximum time limit on detention, and access to remedies is limited in practice for some detainees. Free legal aid exists but access to it is limited in practice. The UK opted out of the EU Returns Directive, which requires particular attention to be paid to situations of increased vulnerability, including statelessness.⁹ Decision-makers do not always consider statelessness as a juridically relevant fact in decisions to detain, meaning that some stateless people face prolonged periods and/or multiple instances of detention.

The British Government should take further steps to protect stateless people from arbitrary detention by improving the identification of statelessness and access to the statelessness determination procedure and ensuring access to effective remedies to challenge detention. The British Government should embed consideration of statelessness as a juridically relevant fact in all decisions to detain and implement a strict time limit on immigration detention.



PREVENTION AND REDUCTION

As State party to the 1961 Convention, the UK has obligations to prevent and reduce statelessness on its territory. Positively, British nationality law contains safeguards to prevent statelessness in the case of foundlings, adopted children, children born in the UK or abroad to British nationals, and children born in the UK to people with permanent residence. However, there are some gaps in the nationality law, leaving some children born in the UK or to British citizens abroad stateless. For example, a child born in the UK to stateless parents who do not yet have permanent residence in the UK will be stateless at birth. The child will be able to register as a British citizen after five years, or upon one of their parents being granted permanent residence or naturalising as a British citizen, but there is a £1,012 (€1174) application fee.

The British Government should consider amending the British Nationality Act to ensure that all children born on its territory who would otherwise be stateless acquire a nationality at birth, regardless of the status of the parents. This should also apply to children born to British nationals outside the UK, encompassing those whose parents are British by descent born outside the UK and who have restricted forms of nationality such as British Overseas Citizenship, or another form of British Citizenship with no right of abode in the UK. The fees for acquisition of British citizenship should be reduced or waived for stateless children (and their parents, where this affects the stateless child's ability to acquire citizenship), particularly for those who cannot afford to pay the fees.

SUMMARY OF RECOMMENDATIONS

- Consider withdrawing reservations to the 1954 and 1961 Conventions and fully incorporating these Conventions into domestic law.
- Consider acceding to other international and regional instruments relevant to statelessness including the European Convention on Nationality, the Convention on the Avoidance of Statelessness in Relation to State Succession, and the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families.
- Improve the identification and recording of statelessness, by ensuring that all relevant officials are trained to accurately identify and record statelessness, by harmonising and defining statistical categories, and including outcomes of applications for leave to remain in the UK as a stateless person in official published immigration statistics.
- Improve the statelessness determination procedure in line with UNHCR Guidance and good practice and fulfil the UK's obligations to stateless people under the 1954 Convention by improving procedural safeguards, including a statutory right of appeal and access to legal aid for statelessness applications.
- Grant stateless people a residence permit within a year of applying unless they are ineligible for reasons set out in the Convention; and provide for facilitated naturalisation through appropriate fee reductions and waivers.
- Better protect stateless people from arbitrary detention by improving the identification of statelessness via access to the statelessness determination procedure and ensuring access to effective remedies to challenge detention.
- Embed consideration of statelessness as a juridically relevant fact in all decisions to detain and implement a strict time limit on immigration detention.
- Consider amending the British Nationality Act to ensure that all children born on the territory who would otherwise be stateless acquire a nationality at birth, regardless of the status of the parents. This should apply to all children born to British nationals outside the UK, encompassing those whose parents are British by descent born outside the UK and who have restricted forms of nationality such as British Overseas Citizenship, or another form of British Citizenship with no right of abode in the UK.
- Reduce or waive the fees for acquisition of British citizenship for both stateless children and their parents, where this affects the stateless child's ability to acquire citizenship, particularly for those who cannot afford to pay them.

ENDNOTES

- 1 <https://index.statelessness.eu>
- 2 www.statelessness.eu
- 3 Judith Carter of the University of Liverpool Law Clinic reviewed and updated the UK's information for the Statelessness Index in 2018. Cynthia Orchard of Asylum Aid/Migrants Resource Centre led the research for the Statelessness Index in the UK in 2017 and prepared this briefing. Contributions were made by various other experts, including Alison Harvey (reviewer for 2017), Pierre Makhlouf, Dr Sarah Woodhouse, and Solange Valdez-Symonds.
- 4 Conclusions of the Council of the European Union and the Representatives of the Governments of the Member States on Statelessness, 4 December 2015, <http://www.consilium.europa.eu/en/press/press-releases/2015/12/04/council-adopts-conclusions-on-statelessness/>
- 5 <https://www.gov.uk/government/publications/immigration-statistics-year-ending-june-2018/list-of-tables#asylum> (Part 7, Table as_01, Asylum applications and initial decisions for main applicants, by country of nationality)
- 6 UNHCR (2018) *Global Trends 2017*, <http://www.unhcr.org/uk/statistics/unhcrstats/5b27be547/unhcr-global-trends-2017.html>. Note that these figures differ from those reported elsewhere by UNHCR, which show 64 stateless persons in the UK at the start of 2017 and 85 by mid-2017 (possibly explained by different reporting periods). See UNHCR's, Population Statistics: <http://popstats.unhcr.org/en/overview> (Table 1.1 Refugees, asylum-seekers, internally displaced persons (IDPs), returnees (refugees and IDPs), stateless persons, and others of concern to UNHCR by country/territory of asylum, mid-2017).
- 7 UNHCR (2014), Handbook on Protection of Stateless Persons, <http://www.unhcr.org/uk/protection/statelessness/53b698ab9/handbook-protection-stateless-persons.html>
- 8 ENS (2017) Protecting Stateless Persons from Arbitrary Detention: An Agenda for Change, https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/ENS_LockeInLimbo_Detention_Agenda_online.pdf
- 9 ANNEX to the COMMISSION RECOMMENDATION establishing a common "Return Handbook" to be used by Member States' competent authorities when carrying out return related tasks, C(2017) 6505, 27 September 2017, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170927_recommendation_on_establishing_a_common_return_handbook_annex_en.pdf

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