

## Asylum Aid Briefing Note on the Introduction of a UK Stateless Determination Procedure effective from 6 April 2013

Back in November 2011 Asylum Aid and UNHCR published their joint study [Mapping Statelessness in the United Kingdom](#). The research mapped the number and profile of stateless persons in the UK and put a human face on their situation. It also examined the UK's legal obligations to stateless persons under international law and analysed the impact of current policy and practice. Based on these findings the report made recommendations for improvement, most notably calling for the introduction of a dedicated UK statelessness determination procedure.

The Home Secretary responded to the report by making a commitment to do precisely this. Following much behind the scenes work over the last 18 months, new Immigration Rules effective from 6 April 2013 make a statelessness determination procedure a reality. The UK Government is to be highly commended for taking this important and very necessary step. Asylum Aid (alongside UNHCR) was part of the Home Office Project Board responsible for advising on the design of the new procedure, and the whole exercise serves as a timely reminder of the value of joined up research and policy dialogue between government and civil society.

This briefing seeks to explain how the new procedure works as well as highlighting some deficiencies already evident with the new arrangements, which Asylum Aid believes will quickly need to be addressed. However, these shortcomings should not be allowed to unduly detract from the hugely positive impact of the new policy for stateless migrants in the UK. Moreover, the new changes provide a very positive example to a number of other European states who have ratified the relevant international instruments but failed to properly implement their obligations by setting up a dedicated statelessness determination procedure and route to regularisation.

### **What is a stateless person?**

The [1954 Convention on the Status of Stateless Persons](#) defines a stateless person as “a person who is not considered as a national by any State under the operation of its law”. In practice this means that many stateless persons are left without legal residence, consular protection, or the right to return to their country of origin. No Government takes responsibility for their protection. For those who have fallen through the cracks in this way, the consequences are serious.

Statelessness occurs for a variety of reasons, including discrimination against minority groups in nationality legislation, failure to include all residents in the body of citizens when a state becomes independent (state succession), and conflicts of laws between states. Statelessness occurs both among migrants and people born in or having lived in the same place for generations. The 1954 Convention concerns the former group by aiming to regulate the status of stateless persons and to ensure the widest possible enjoyment of their human rights – complemented by the relevant provisions of international human rights treaties. The [1961 Convention on the Reduction of Statelessness](#) concerns the latter group, and primarily guides States on how to prevent statelessness arising in the first place. The UK has ratified both Conventions although the new policy and procedure relates to responsibilities under the 1954 Convention.

### **What was the problem that needed to be fixed?**

Despite the UK's obligations under the 1954 Convention and international human rights law, UNHCR and Asylum Aid's mapping study found that stateless persons without leave to remain in the UK often go unidentified, and that those without leave to remain often live at risk of human rights infringements. During the research interviews were conducted with stateless persons who had been destitute for months, had been detained by immigration authorities in spite of evidence that showed there was no prospect of return, or had been separated for years from their

families abroad. Some had been forced to sleep on the streets. Many had seen their accommodation and support repeatedly cancelled and reinstated. Almost all of this group were prohibited from working. Few were in a position to break this cycle. In the absence of a dedicated and accessible procedure to identify people who are stateless, they were left in legal limbo for years.

### **How will the new procedure work?**

The new procedure is governed by the Immigration Rules (laid out in paragraphs 124-139 [here](#)), and accompanying UKBA guidance which should soon also be available on the UKBA website.

Applications must be submitted by post on a designated application form (accessible [here](#)) and will be considered by a dedicated team in the Complex Casework Directorate based in Liverpool. There is no application fee but where applicants have not previously undergone bio-metric screening (e.g. during a prior asylum application) they will need to do so at a Post Office. There are no designated minimum or maximum time limits for decision-making under the new procedure, which in practice will likely depend on the complexity of the case under consideration. Applicants are expected to cooperate fully with the procedure including by submitting all available documentation and undertaking, or consenting to, enquiries to the relevant authorities of any country with which they have a possible nationality connection. Personal interviews will not be mandatory but will usually take place where it is intended to refuse an application.

It remains to be seen whether UKBA personnel will properly play their part in helping to gather the evidence necessary to demonstrate that someone is stateless, or to apply in their decision-making a standard of proof appropriate to the inherent difficulties in evidencing statelessness. [UNHCR Guidelines on Procedures for Determining whether an Individual is a Stateless Person](#) provide useful guidance on international standards and best practice on these questions. Asylum Aid is concerned that the objectives of the new policy will be seriously undermined if applicants are required to meet unduly high evidentiary requirements.

These potential difficulties will likely be exacerbated by the fact that statelessness claims will be out of scope under recent legal aid changes except where transitional arrangements apply or where there is eligibility in connection with judicial review proceedings. Given the absence of an automatic statutory right of appeal against the refusal of leave to remain as a stateless person (except where, for example, non-asylum applicants have not had a previous appeal in which event enforcement papers will be served with an attached right of appeal against removal), judicial review will often be the only means by which to challenge a negative decision. Asylum Aid questions whether this will serve as an adequate or appropriate review mechanism, particularly given anticipated problems with the quality of initial decision-making early on in the operation of a new procedure.

### **Who should apply?**

The new policy and procedure is open to any stateless person present in the UK although it is primarily intended for those who do not qualify for refugee status or for Humanitarian Protection or any other form of leave under the Immigration Rules but who consider that they meet the definition under Article 1 (1) of the 1954 Statelessness Convention (see above), sometimes known as *de jure* stateless persons. The new procedure is not intended for undocumented migrants *per se*, including those sometimes labelled '*de facto*' stateless persons and for whom there is no universally accepted definition under international law. Assistance with questions of interpretation is provided by [UNHCR Guidelines on the Definition of a Stateless Person](#).

The new Immigration Rules also make it clear that leave will not be granted if an individual accepted as stateless is considered admissible to another country provided this is in accordance with the UK's international obligations. There is concern that the way the new policy is currently drafted may allow decision-makers too much leeway to conclude that a stateless person would be admissible to another country even where the individual has no formal

residence status in it and/or would not be able to enjoy all the rights owing under the 1954 Statelessness Convention and wider international human rights law if returned there.

Leave will also be refused where “there are reasonable grounds for considering that” the person is a danger to the security or public order of the UK, or where their application would fall to be refused under any of the general grounds set out in para 322 of the Immigration Rules. Other exclusion criteria relate to individuals already receiving assistance from the United Nations Relief and Works Agency and to those who would otherwise qualify as stateless persons but are considered undeserving of protection because there are “serious grounds for considering” that they committed war crimes, crimes against peace or humanity, serious non-political grounds or act contrary to the purposes and principles of the UN. These are set out in more detail at para 402 of the Immigration Rules.

### ***What rights and benefits attach to the new procedure?***

A significant deficiency with new arrangements is the absence of any dedicated support provision linked to the new procedure, thereby limiting stateless applicants to access to continuing receipt of section 4 support where eligible. The UNHCR/Asylum Aid mapping study already sets out in detail why section 4 support criteria (including the requirement “to take all reasonable steps to leave the UK”) are unsuitable for stateless persons. Equally problematic is the absence of dedicated legal aid provision for applicants to navigate the new procedure and to provide evidence of their statelessness – a notoriously complex and difficult task.

Those recognised as being stateless and not admissible to any other country will be granted 30 months’ leave to remain with the right to claim benefits, access the labour market and receive NHS care (equivalent to discretionary leave entitlements). Family members will be eligible for leave on the same basis. Following an application for and extension of their leave, stateless persons will be eligible for indefinite leave to remain after 5 years. Thereafter they should be eligible to apply for naturalisation as British citizens thereby providing a final route out of statelessness.

### ***How to access advice and information about the new procedure?***

A wide range of information about statelessness is available on the [UNHCR Refworld](#) website. UNHCR’s mandate includes stateless persons, and its [London office](#) can be contacted for further information. Relevant resources can also be obtained from the [European Network on Statelessness](#) a pan European civil society alliance coordinated by Asylum Aid and with 71 members in 30 countries. For further information or to join the Network contact [info@statelessness.eu](mailto:info@statelessness.eu)

[Asylum Aid](#), in partnership with [The Equal Rights Trust](#) and [Adrian Berry \(Garden Court Chambers\)](#) will soon deliver a series of pro bono statelessness training sessions for lawyers across the UK. Meanwhile [ILPA](#) will be running a [training session](#) in London on 24 April.

From Tuesday 30<sup>th</sup> April 2013, initial advice on individual cases involving statelessness will be available from Asylum Aid’s legal team on Tuesdays from 3pm to 4pm by calling the [advice line](#) on 020 7354 9264.

Asylum Aid looks forward to working with other interested parties to raise awareness about the new procedure, to provide relevant information and training, to monitor implementation in practice and to advocate for any necessary reform.

***For further information please contact Asylum Aid’s International Protection Policy Coordinator, Chris Nash, at [chrisn@asylumaid.org.uk](mailto:chrisn@asylumaid.org.uk) or telephone 020 7354 9631 ext 221.***

***April 2013***