

## Stateless children

This fact sheet provides information on statelessness, including when a child is stateless and the process to be followed in order to regularise their status.

### What is statelessness?

Being stateless means that someone does not have a country of nationality and no government takes responsibility for them. A stateless person is defined as someone who 'is not considered as a national by any State under the operation of its law'. [1] Someone who is stateless lacks legal residence and the right of return to their country, and cannot access consular protection from anywhere.

Statelessness can arise because of discrimination in a country's system of nationality law, or when there are changes such as a state gaining independence. In other cases someone is stateless due to them or their family having migrated.

States have obligations to stateless people under international human rights law and specifically the Convention relating to the Status of Stateless Persons 1954 and the Convention on the Reduction of Statelessness 1961.

### When is a child not stateless?

A child is not stateless simply because they do not have a passport.

Some children who are born in the UK to foreign national parents are automatically born British citizens. This is the case, for example, if at least one of the child's parents is a British citizen or has indefinite leave to remain (is settled) when the child is born. Other children born in the UK can be registered as British citizens. For more information, see our [fact sheet on citizenship](http://www.coramchildrenslegalcentre.com/resources/fact-sheet-on-citizenship) (at [www.coramchildrenslegalcentre.com/resources](http://www.coramchildrenslegalcentre.com/resources)).

If a child is born in the UK but is not automatically a British citizen and cannot be registered as a British citizen, that still does not mean that they are

necessarily stateless. A child born in the UK to foreign national parents may be able to acquire the nationality of one or both of their parents. This is normally done by going to the embassy of their parent's country of nationality to try to obtain a passport for the child.

In order for a child born in the UK to be stateless, they must show the following:

- is and has always been stateless
- is under the age of 22 on the date of the application
- lived in the UK 5 years prior to the making of the application.

In the 2017 case *MK v SSHD* [2017] EWHC 1265 (Admin), it was found that under Indian law, the child was not automatically an Indian national (she was born in the UK to Indian nationals) – she would need to go through a registration process in order to do so. It was found that the child was stateless, as the ability to acquire nationality in this context is irrelevant. [2]

The judge also gave some guidance to the type of evidence that would need to be provided – including sworn statements from the parents, evidence from the relevant country's Consulate.

Nationality law is different for each country and there will be different rules for when someone is automatically a citizen of a country.

For further information please see our case note here: [www.coramchildrenslegalcentre.com/resources/mk-v-sshd/](http://www.coramchildrenslegalcentre.com/resources/mk-v-sshd/).

### Who might be stateless?

Any child might be stateless. However, some common examples of stateless children can include: Palestinians, Roma, Kuwait Bidoons, Rohingya from Myanmar, Kurds from Syria, Jews from Iraq, and Nepalais from Bhutan.

Some countries where statelessness issues can also arise include Eritrea/Ethiopia, Algeria, Belarus, Burundi, Chad, China, Kenya/Somalia, Liberia,

Lithuania, Malaysia, Mozambique, Sierra Leone and Zimbabwe. [3]

### **How can someone make a statelessness application to the Home Office?**

From April 2013 the UK government introduced a new statelessness determination procedure to identify those who are stateless and provide them with a route to legal status. Prior to this there was no dedicated route for stateless people to make an application to the Home Office to be recognised as stateless.

The rules on statelessness applications are contained in the Immigration Rules at paragraphs 401 to 416.

[4] Guidance can be found on the Home Office website on how it will consider applications. [5]

Applications for leave as a stateless person should be sent by post on the designated application form available on the Home Office website. [6] There is no fee for the application.

The Liverpool Law Clinic (University of Liverpool) and ILPA have recently published best practice guidance on statelessness applications. The guide provides detailed practical information on obtaining and submitting evidence. [7]

Evidencing statelessness can be very difficult and as much evidence should be provided with the application form as possible to show that the applicant is stateless. Like asylum claims, the main source of evidence will often come from the applicant's statement, although submitting a statement is not always necessary.

The Home Office application provides a long list of documents that the applicant could provide as evidence of statelessness, including: identity documents, passports and/or travel documents, marriage certificates, school certificates and medical certificates/records (this is a non-exhaustive list). A parent making a statelessness application should include their child or children as dependants if the child or children do not have leave in the UK, and parents should also try to provide the evidence above for their dependants.

### **What happens if a statelessness application is granted?**

If an application is granted, the child will be granted leave to remain as a stateless person for 30 months (two and a half years) with the right to work and access to public funds. Before this period of leave expires, they must apply for further leave and, if granted, will get another 30 months' (two and a half years') leave to remain. After five years they can apply for indefinite leave to remain (settlement).

### **What happens if a statelessness application is refused?**

If an application is refused, there is no automatic statutory right of appeal against the refusal. In some cases there might be an appeal right, but often judicial review will be the only way to challenge a negative decision.

### **Is legal aid available for a statelessness application?**

No legal aid is available to get an immigration solicitor to help make a statelessness application. However, legal aid is available for judicial review, if needed to challenge an unlawful refusal of a statelessness application where there is no right of appeal.

Where a child is looked after by a local authority, the local authority should help them to resolve their legal status, including paying for private legal services if necessary.

There is a statelessness project at Liverpool Law Clinic, part of the University of Liverpool, (<https://www.liverpool.ac.uk/law/liverpool-law-clinic/statelessness/>) which offers legal advice and representation to those in the UK who may be stateless. For referrals to the project, contact [clinic@liverpool.ac.uk](mailto:clinic@liverpool.ac.uk) or call 0151 794 5782.

### **NOTES**

[1] Convention relating to the Status of Stateless Persons 1954

[2] *MK (a child by her litigation friend CAE) V SSHD* [2017] EWHC 1365 (Admin), at

[http://www.bailii.org/ew/cases/EWHC/Admin/2017/1365.htm](http://www.bailii.org/ew/cases/EWHC/Admin/2017/1365.html)  
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[3] See Frances Meyler at [freemovement.org.uk](http://freemovement.org.uk)

<http://www.freemovement.org.uk/2013/09/20/statelessness-call-for-referrals-by-liverpool-law-clinic/>

[4] Immigration Rules 401 to 416 at

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/279697/Immigration\\_Rules\\_-\\_Part\\_14.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/279697/Immigration_Rules_-_Part_14.pdf)

[5] See gov.uk website

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/501509/Statelessness\\_AI\\_v2.0\\_EXT\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/501509/Statelessness_AI_v2.0_EXT_.pdf)

[6] See gov.uk website:

<https://www.gov.uk/government/publications/application-to-extend-stay-in-uk-as-stateless-person-form-flrs>

[7] See ILPA & Liverpool Law Clinic, Statelessness and applications for leave to remain: a best practice guide, November 2016

<http://www.ilpa.org.uk/resource/32620/statelessness-and-applications-for-leave-to-remain-a-best-practice-guide-dr-sarah-woodhouse-and-judi>

**This fact sheet should not be used to give legal advice and is for information and guidance only. For advice on individual cases, assistance should be sought from an independent regulated legal adviser.**

**For further assistance please contact us by email at [mcpadvice@coramclc.org.uk](mailto:mcpadvice@coramclc.org.uk) or call our advice line on 020 7636 8505 (Tuesday to Thursday 10am-2pm).**