

Submission on the Immigration and Asylum (Provision of Services or Facilities) (Amendment) Regulations 2023 and Statement of changes in Immigration Rules (HC 246) and government response

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Changes to the Immigration Rules on Family Reunification for Stateless Persons

Briefing to the Secondary Legislation Scrutiny Committee

On behalf of Asylum Aid and the University of Liverpool Law Clinic

Introduction

- 1.1 [Asylum Aid](#) delivers high quality legal representation to some of the most vulnerable people seeking asylum in the UK: children, survivors of trafficking, and stateless people. Together with UNHCR we undertook research mapping statelessness in the UK in 2011 and on the basis of that research persuaded the UK Home Office to adopt a statelessness determination procedure. Asylum Aid works in partnership with pro bono lawyers from 11 city law firms to provide free legal advice and representation to stateless persons in the statelessness determination and grant of leave procedure. Since 2018 we have provided advice to 54 potentially stateless individuals through this project. We work to improve the protection of stateless persons in the UK through participating in Home Office stakeholder meetings, drawing on our expertise and experience of the procedure, and delivering training and raising awareness among other legal professionals.
- 1.2 The [Liverpool Law Clinic](#) is a legal practice based in the University of Liverpool. Clients access free legal advice, assistance and representation on a range of matters, including determinations of statelessness in the context of migration, deportation and acquisition of nationality. Qualified lawyers at the Law Clinic have been teaching students through this work since 2013. Staff have authored a practice guide, a report, a case note, hold regular stakeholder policy meetings with the Home Office, contributed to pre-UPR work on the UK's 2018 review, held an international conference on statelessness, maintain the UNHCR Index on Statelessness for the UK, and are active members of ENS.
- 1.3 Asylum Aid and the Liverpool Law Clinic ask that the Secondary Legislation Scrutiny Committee draw the [Statement of Changes to the Immigration Rules \(HC 246\)](#) laid before Parliament on 7 December 2023 to the special attention of the House since HC 246 is politically and/or legally important and/or gives rise to issues of public policy likely to be of interest to the House. In particular we are concerned that the Statement introduces changes to the rules on family reunification for stateless persons which will significantly diminish the rights of stateless persons in the UK, and for which no justification has been offered by the Secretary of State.¹
- 1.4 In addition, there appears to be a significant omission for children who are not themselves stateless but whose parents are stateless persons, where either both parents are eligible for leave as stateless persons or where one parent has leave as a stateless person and the other parent is not seeking to join them in the UK for whatever reason.

Part I: Legal and policy background

The current Immigration Rules on Statelessness

2. Part 14 of the current Immigration Rules was introduced in April 2013² to provide for a procedure through which stateless persons could regularise their immigration status in the

¹ The [Explanatory Memorandum](#) published with the Statement of Changes offers no explanation for the change, merely describing, in summary form, their effect: paragraphs 7.19-7.20.

² By [Statement of Changes to the Immigration Rules HC 1039](#), laid before Parliament on 14 March 2013.

United Kingdom. The Explanatory Memorandum to the Statement of Changes which introduced it explained that the purpose of the new Rules was to address a gap in protection for people who were stateless, had no status in the UK and no way of leaving.³ It stated that “This instrument provides a route for those who are genuinely stateless and in the UK to regularise their stay. It reaffirms the UK’s position to offer protection to those who truly need it.”⁴

- 2.1 The current [Home Office guidance](#) to caseworkers on considering applications by stateless persons explains the policy intention as follows:

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 conflicting laws between states. In some countries, citizenship can be lost automatically after prolonged residence in another country. The absence of proof of birth, origins or legal identity in several countries can also increase the risk of statelessness.

Possession of nationality is considered essential for full participation in society and a prerequisite for the enjoyment of the full range of human rights. Stateless people are not necessarily at risk of persecution or serious harm in their country of habitual residence, but they are potentially vulnerable to serious discrimination. They may, for example, be denied the right to own land or exercise the right to vote. They are often unable to obtain identity documents. They can be denied access to education and health services or blocked from obtaining employment.

In 1954, the United Nations adopted the Convention Relating to the Status of Stateless Persons, which the UK ratified in April 1959. The Office of the United Nations High Commissioner for Refugees (UNHCR) has a mandate to work with governments to prevent and reduce statelessness and to identify and protect stateless persons. In April 2013, the UK incorporated a new procedure under the Immigration Rules to allow stateless persons to be formally determined as stateless and granted leave to remain where they have no other right to remain under the rules but cannot leave voluntarily or be removed from the UK because they have no right of permanent residence in their country of former habitual residence or in any other country.

- 2.2 Under Part 14 of the Immigration Rules (‘Part 14’), persons recognised as stateless may be granted leave to remain in the UK providing certain other criteria are met), normally for five years, following which they are eligible to apply for indefinite leave to remain. Those recognised as stateless are also entitled to a stateless persons travel document which allows them to travel outside the UK. Part 14 provides for the family members⁵ of stateless persons to be granted leave to enter or remain in line with the stateless person, whether or not they are themselves also stateless. Stateless persons who have obtained indefinite leave to remain and completed the required period of residence in the UK are eligible to apply for naturalisation as British citizens.
- 2.3 A point to note for this submission is that the stateless person can only obtain leave to remain in the UK if they can prove to the civil standard that they are unable to secure the right of

³ Paragraph 7.39.

⁴ Paragraph 7.40.

⁵ Spouse, civil partner, unmarried partner or an unmarried child under the age of 18 who has not formed an independent family life of their own.

admission to any other country outside the UK.⁶

Changes to be made by HC 246

- 2.4 In its latest Statement of Changes to the Immigration Rules (**HC 246**) laid before Parliament on 7 December 2023, the Home Office announced a number of changes to Immigration Rules, including to the EU Settlement Scheme, visitor rules, the Youth Mobility Scheme, and to the provisions on statelessness. This briefing focuses on the changes introduced by the new Appendix Statelessness, which will replace Part 14 of the Immigration Rules. These changes will take effect on 31 January 2024.⁷
- 2.5 In summary, the key changes introduced by the new Appendix Statelessness include:
- A. alternative settlement routes for partners and children of a stateless person;
 - B. transitional provisions for partners or children who currently have permission under the existing Part 14; and
 - C. a ‘validity’ requirement for stateless applicants to have satisfactorily established their identity; and
 - D. the opportunity for stateless applicants to combine time spent on other routes that qualify for settlement after a 5-year qualifying period.
- 2.6 Asylum Aid and Liverpool Law Clinic are concerned by changes (A) (B) and (C) for the reasons explained in more detail below.

3. Part II: Concerns with the proposed changes to Family Reunion

(A) Alternative settlement routes for partners and children of a Stateless Person

- 3.1 From 31 January 2024, a partner or child of a Stateless Person (who is not themselves stateless and therefore applying in their own right) will no longer be able to apply for entry clearance, permission to stay or settlement under Part 14.⁸ Instead, such persons will need to meet the requirements to join or remain with a Stateless Person in the UK under Appendix FM.⁹ Appendix FM is the existing regime that applies more generally to family members seeking to enter or remain in the UK with a person who is a British Citizen, is settled in the UK, is in the UK with protection status,¹⁰ or is in the UK with limited leave under Appendix EU or by virtue of the EC Association Agreement with Turkey.¹¹
- 3.2 The requirements for family members under the Part 14 regime and under Appendix FM are set out in further detail in the Annex to this Briefing. However, the key difference between the two regimes is that the requirements under Appendix FM are far more stringent than that under Part 14. Crucially, for a partner, parent or child to qualify for entry clearance or leave to remain on a 5-year route, they would ordinarily need to meet financial, accommodation and English language requirements. There are no such requirements for family members under Part 14. In

⁶ Paragraph 403(c) of Part 14; para S3.2(b) of App S

⁷ [Statement of Changes to the Immigration Rules \(HC 246\)](#), 7 December 2023, pp 3-4.

⁸ [Statement of Changes to the Immigration Rules \(HC 246\)](#), 7 December 2023, para 14.2.

⁹ [Statement of Changes to the Immigration Rules \(HC 246\)](#), 7 December 2023, para APP S1.

¹⁰ ‘protection status’ here means refugee status or humanitarian protection status.

¹¹ [Appendix FM](#), GEN.1.1.

addition:

- (a) There are significant costs associated with an application under Appendix FM,¹² whereas an application as a family member under Part 14 is free of charge. Fee waivers are available but administratively and evidentially difficult and can cause delay.¹³
- (b) Permission to enter or stay under Appendix FM is granted for 30 months at a time, necessitating frequent repeat applications, whereas permission granted to a family member under Part 14 is for up to five years, in line with the principal applicant.
- (c) For family members who cannot meet all the requirements of Appendix FM, while they may be granted leave on the basis of exceptional circumstances or their right to a family life, they will not then normally be eligible for settlement (indefinite permission to stay) for at least 10 years. Family members granted permission to stay under Part 14 can apply for indefinite permission after 5 years.
- (d) There appears to be no route for children who are not eligible under Appendix Statelessness where neither parent is applying for leave under Appendix FM, for example because (i) both parents are eligible for leave under Appendix Statelessness or (ii) the parent granted leave under Appendix Statelessness is widowed, separated or otherwise has sole responsibility for the child.

3.3 The already high hurdles imposed by the stringent requirements under Appendix FM will be raised further in the near future – on 4 December 2023, the Government stated that it intended to more than double the minimum income requirement under Appendix FM from £18,600 to £38,700, thereby matching the minimum income salary threshold for skilled workers.¹⁴ This change is expected to take effect in stages, beginning with an initial increase to £29,000 in spring 2024, rising to £38,700 by early 2025.¹⁵

3.4 While applications under Part 14 are free and exempt from the Immigration Health Surcharge (*IHS*), an applicant under Appendix FM must pay both a hefty application fee as well as the cost of the IHS:

(a) Following the introduction of the [Immigration and Nationality \(Fees\) \(Amendment\) \(No. 2\) Regulations 2023](#), which came into force on 4 October 2023,¹⁶ the fee for applications from outside the UK was raised from £1,538 to £1,846 (an increase of 20%).¹⁷ While the fee for applications in the UK is currently £1,048, the Government has indicated its intention to implement a 20% increase “in due course”.¹⁸

(b) The Government has also announced that it is planning to increase the IHS by 66%, from £624 to £1,035 per person per year.¹⁹ Crucially, the Impact Assessment prepared alongside the draft instrument introducing this change was carried out on the assumption that “stateless

¹² See paragraph 2.11 below.

¹³ See paragraph 2.13 below.

¹⁴ UK Parliament Hansard, [Legal Migration, Volume 742: debated on Monday 4 December 2023](#).

¹⁵ <https://commonslibrary.parliament.uk/research-briefings/cbp-9920/#:~:text=The%20spouse%2Fpartner%20visa%20minimum,38%2C700%20%E2%80%9Cin%20early%202025%E2%80%9D>.

¹⁶ [Immigration and Nationality \(Fees\) \(Amendment\) \(No. 2\) Regulations 2023](#), regulation 1(2).

¹⁷ [Explanatory Memorandum to the Immigration and Nationality \(Fees\) \(Amendment\) \(No. 2\) Regulations 2023](#), p 13.

¹⁸ [Explanatory Memorandum to the Immigration and Nationality \(Fees\) \(Amendment\) \(No. 2\) Regulations 2023](#), p 13.

¹⁹ [Immigration \(Health Charge\) \(Amendment\) Order 2023](#), section 2(3)(b).

individuals” would be exempt from payment of the IHS, which will no longer be the case following the changes introduced by HC 246.²⁰

- 3.5 These additional costs mean that an application under Appendix FM will be prohibitively expensive for a significant number of family members of Stateless Persons: a total of £4,643 in fees per person every 30 months.
- 3.6 While it is possible for applicants to seek a fee waiver of both the application fee and the IHS on the basis that requiring payment would be incompatible with Article 8 of the European Convention on Human Rights,²¹ the application process is administratively difficult²² and it may take weeks or even months to obtain a decision.²³ The bar for being granted a fee waiver is also extremely high: the applicant must be found either: (i) to have credibly demonstrated they cannot afford the fee; (ii) to be destitute; (iii) be at risk of imminent destitution; or (iv) have income that is not sufficient to meet a child’s particular and essential additional needs.²⁴ The evidential onus to demonstrate that they qualify for a fee waiver rests on the applicant.²⁵
- 3.7 Permission to stay under Appendix FM is granted for only 30 months at a time, in contrast to the permission granted to family members under Part 14, which would normally be for up to five years in the first instance (in line with the stateless person), with the ability to apply for indefinite leave remain after 5 years’ residence. While permission can be renewed for another 30 months, the work involved in a further application (together with a further fee waiver application if required) – both for the applicant and for the Home Office – imposes a considerable burden.
- 3.8 Family members who cannot meet the financial, accommodation and/or English language requirements may be granted leave if the Home Office is satisfied that “exceptional circumstances” apply and/or that the refusal of leave would breach the right to respect for family life under Article 8, ECHR. However, family members granted leave to remain on such grounds will not normally qualify for indefinite leave to remain until they have completed at least 10 years’ residence. As well as leaving them in a less stable situation, this also means they will normally have to make at least three more applications for leave to remain, including three more applications for fee waivers if they cannot afford the fees.
- 3.9 Based on our experience of working with stateless persons in the UK, we would expect the vast majority to need to rely on exceptional circumstances to secure family reunification. This is because they are unlikely to be able to meet the immigration status requirements, due to having entered the UK without leave or having overstayed any leave they may have had but having been unable to leave the UK or regularise their status through any other route as a result of their lack of nationality and/or lack of identity documentation. In addition, many of our clients have spent long periods of time in this situation of limbo, unable to work and support themselves,

²⁰ Home Office, [Impact Assessment: Increasing the Immigration Health Surcharge](#), 6 October 2023, para 6.

²¹ Home Office, [Affordability fee waiver: overseas Human Rights-based applications \(Article 8\)](#), 16 June 2022.

²² See e.g. “A fee waiver is available if the person can prove that they cannot afford the fee, but that application is also complex, requiring evidence of every bank account the individual or family holds, annotated to explain every credit or debit over £20, as well as tenancy agreements, utility bills, payslips if anyone in the family is working, and so on.”

²³ Right to Remain’s website reports that they have heard of people waiting five months for a decision:
<https://righttoremain.org.uk/applying-for-a-fee-waiver-for-an-immigration-application-in-the-uk/>

²⁴ Home Office, [Affordability fee waiver: overseas Human Rights-based applications \(Article 8\)](#), 16 June 2022, p 11.

²⁵ Home Office, [Affordability fee waiver: overseas Human Rights-based applications \(Article 8\)](#), 16 June 2022, p 16.

meaning they are unlikely to be able to meet the financial requirements.

(B) Transitional provisions for partners or children who currently have permission under the existing Part 14 regime

- 3.10 Under the new Appendix Statelessness, any partners or children who currently have permission under Part 14 will continue to be able to extend their permission or settle in the UK under Part 14 on or after 31 January 2024. A child born in the UK to a parent who has either permission to enter or stay as a Stateless Person or is the partner of a Stateless Person can also continue to apply for permission to stay under Part 14.²⁶
- 3.11 However, even where a family member seeks permission to join or remain in the UK with a stateless person who applied for, or was granted, permission to stay under Part 14 before 31 January 2024, they will be required to apply under Appendix FM (except in the case of a child born in the UK to a stateless person). This is unfair to those who have been granted Part 14 leave with the expectation of family reunion under those requirements. Many will be unaware of the changes and continue to believe their family can apply under the Part 14 rules after January 31. They will therefore be even less prepared for, and unlikely to meet, the Appendix FM requirements than those applying under Appendix S.

Case study

An asylum seeker arrived in the UK in 2016, claimed asylum and was refused, and made a fresh claim which was also refused. Although the Home Office recognised that he comes from a known stateless population, officials didn't refer him to the statelessness leave route.

An application for leave to remain as a stateless person was finally made by specialist advisers in 2020. While he waited for a decision he had no right to bring any family members to live with him, nor could he work or study. His only assistance was 'hardship payments' and a room in designated accommodation under s4 Immigration and Asylum Act 1999. The Home Office granted him leave to remain over two years later in 2022 (the delay all with the Home Office). In granting leave to remain, the Home Office accepted that he could not gain admission to any other country.

In summer 2023 he married a woman from his community who lives abroad. He is, unsurprisingly, not earning the new minimum earnings of £38,700, nor even £29,700 and nor does he have savings. From 30 January 2024 his wife would have to apply under App FM, and would be unable to meet the normal requirements. Instead, her case would fall under the 'saving' rule EX1 which will require her to show that there are "very significant difficulties which would be faced by the applicant or their partner in continuing their family life together outside the UK and which could not be overcome or would entail very serious hardship for the applicant or their partner." (para EX.2 of App FM).

The sponsor has already shown that he cannot enter any other country; it is very unlikely that the wife will ever be able to sponsor the stateless person to live with her. One reason is that there is no guarantee that the UK would renew his stateless person's travel document (the only international

²⁶ [Statement of Changes to the Immigration Rules \(HC 246\)](#), 7 December 2023, paras 14.2, APP S1.

ID available) if he were to try to live in his wife's country. In any case, the wife is also a refugee outside her country of origin.

She would also have to request a fee waiver to avoid paying the application fee of £1,538 and the Health Surcharge of £3,105. She may pass the English test (fee £150). Requesting a fee waiver is, in the experience of Asylum Aid and the Liverpool Law Clinic, onerous work which is not remunerated.

All of this work is outside the scope of Legal Aid, unless Exceptional Case Funding has been obtained.

Loss of right to family reunification

3.12 The proposed changes to be introduced by HC 246 for the family members of stateless persons violate the right to family reunification, which:

derives from the principle of “*family unity*” the right to family life under Article 8(1) of the European Convention on Human Rights;

is implied by the [1954 Convention relating to the Status of Stateless Persons](#) (the *1954 Statelessness Convention*);

derives indirectly from the [1951 Convention relating to the Status of Refugees](#) (the *Refugee Convention*) due to links between the 1954 Statelessness and Refugee Conventions; and

derives from the duty to safeguard and promote the welfare of children.

Principle of “family unity” / the right to family life

3.13 The principle of “family unity” is recognised in a number of international human rights instruments, such as the Universal Declaration of Human Rights,²⁸ the UN Convention on the Rights of the Child (*CRC*),²⁹ the International Covenant on Civil and Political Rights (*ICCPR*)³⁰, and the International Covenant on Economic Social and Cultural Rights (*ICESCR*)³¹. The right to respect for family life is also enshrined in Article 8(1) of the

²⁸ [Universal Declaration of Human Rights](#), Article 16(3) (“The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”).

²⁹ [UN Convention on the Rights of the Child](#), Article 16(1) (“No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.”).

³⁰ [International Covenant on Civil and Political Rights](#), Articles 17(1) (“No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.”) and 23(1) (“The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”).

³¹ [International Covenant on Economic, Social and Cultural Rights](#), Article 10(1) (“The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children.”).

European Convention on Human Rights (*ECHR*).³²

- 3.14 There is growing recognition that States have an obligation to facilitate family reunification as a corollary to the right to family unity,³³ particularly when family members are “*separated for political, economic or similar reasons*”.³⁴ For example, the Human Rights Committee determined in *Hendrick Winata and So Lan Li v Australia* that “*it is incumbent on the State party to demonstrate additional factors justifying the [deportation of two Stateless Persons who are parents to an Australian child] that go beyond a simple enforcement of its immigration law in order to avoid a characterisation of arbitrariness*”. The Committee concluded that in this case, implementation of the deportation would constitute an arbitrary interference with the family, contrary to Article 17(1), in conjunction with Article 23, of the ICCPR in respect of all of the alleged victims, and, additionally, a violation of Article 24(1), in relation to the child due to a failure to provide him with the necessary measures of protection as a minor.³⁵
- 3.15 The European Court of Human Rights (*ECtHR*) has confirmed that although Article 8 of the ECHR does not guarantee a Stateless Person “*the right to the granting of a particular type of residence permit*”, the solution offered by the authorities must allow “*the individual concerned to exercise without obstacles his or her right to respect for private and/or family life*”.³⁶
- 3.16 The grant of permission to a stateless person in the UK under Appendix Statelessness is explicitly to comply with international obligations under the 1954 Statelessness Convention, as set out in the policy statements from 2013, 2016 and 2019 and thus is not ‘temporary protection’ or ‘subsidiary protection’ (those are more akin to the UK status of ‘discretionary leave’).
- 3.17 The ECtHR has established that there is a positive obligation under Article 8 to grant family reunification, even to a person who only has ‘temporary protection’ rather than protection under an international Convention such as the Refugee Convention (or, it can be inferred, the sister UN Convention on the Status of Stateless Persons) if any of these substantive elements warrant it: (i) strong ties to the host country of the sponsor requesting family reunion and his family members; (ii) a settled immigration status in the host country when their family life was created; (iii) there were insurmountable or major obstacles in the way of the family living in the country of origin of the person requesting reunification; (iv) children were involved; (v) in the case of a person with only temporary or subsidiary protection status (not protection under an international Convention), the person requesting reunion could demonstrate that he/she had sufficient independent and lasting income, not being welfare benefits, to provide for the basic

³² [European Convention on Human Rights](#), Article 8(1) (“Everyone has the right to respect for his private and family life, his home and his correspondence.”).

³³ Human Rights Committee, [General Comment 15, The position of aliens under the Covenant](#) (Twenty-seventh session, 1986), para 5 (“The Covenant does not recognize the right of aliens to enter or reside in the territory of a State party. It is in principle a matter for the State to decide who it will admit to its territory. However, in certain circumstances an alien may enjoy the protection of the Covenant even in relation to entry or residence, for example, when considerations of non-discrimination, prohibition of inhuman treatment and respect for family life arise.”).

³⁴ Human Rights Committee, [General Comment 19, Article 23 \(The Family\): Protection of the Family, the Right to Marriage and Equality of the Spouses](#), para 5 (“The right to found a family implies, in principle, the possibility to procreate and live together. [...] Similarly, the possibility to live together implies the adoption of appropriate measures, both at the internal level and as the case may be, in cooperation with other States, to ensure the unity or reunification of families, particularly when their members are separated for political, economic or similar reasons.”).

³⁵ [Hendrick Winata and So Lan Li v Australia](#), CCPR/C/72/D/930/2000, UN Human Rights Committee (HRC), 16 August 2001, para 7.3.

³⁶ [Hoti v Croatia](#), no 63311/14, 26 April 2018, para 121.

cost of subsistence of his or her family members.³⁷

- 3.18 In the case of the family members of stateless persons granted permission to stay in the UK, whether under Part 14 (as it currently is) or Appendix Stateless, it will have been accepted that they have no nationality;³⁸ cannot obtain or re-establish any prior nationality;³⁹ and have taken reasonable steps to facilitate admission to their country of former habitual residence, or any other country, but have been unable to secure the right of admission.⁴⁰ In these circumstances it is unarguable that there will be “insurmountable or major obstacles in the way of the family living in the country of origin” of the family member. Were it otherwise, the stateless person would fall to be refused, or have their permission to stay curtailed, on the basis that they could secure admission to the family member’s country of origin.
- 3.19 In the case of a grant of leave to a stateless person in the UK who has family members living outside the UK, the same considerations apply as in the previous paragraph: there would have been no grant of leave to remain were it possible for the stateless person to join their family members abroad.
- 3.20 Given that a grant of permission to stay to the family members of stateless persons with permission to stay under Appendix Statelessness will therefore ordinarily be required to ensure respect for the right to family unity, the new requirement to apply under Appendix FM, with the minimum income requirement, places unjustified obstacles in the way of family reunification and will hinder the mutual enjoyment of each other’s company by relevant family members.
- 3.21 The ECtHR has also confirmed that the margin of appreciation of national authorities varies depending on the issues at stake, and when it relates to respect for family life, a stricter scrutiny is warranted.⁴¹ Thus, domestic measures hindering the mutual enjoyment by parent and children of each other’s company amounts to an interference with Article 8 of the ECHR.⁴² The absence of any articulated justification for the changes to family reunification rights for stateless persons is of particular concern in this context.
- 3.22 Finally, guaranteeing the right to family life also entails a procedural obligation to ensure a fair and prompt decision-making process. The ECtHR has established that it is of “*crucial importance*” that approved family reunification applications be “*examined promptly, attentively and with particular diligence*”.⁴³ The purposive construction of the ECHR requires an understanding and application of its provisions such as to render its requirements practical and effective, not theoretical and illusory, in their application to the particular case.⁴⁴
- 3.23 For example, in [Tanda-Muzinga v France](#), even though the State eventually approved the application for family reunification, it took almost three and a half years for the national authorities to cease contesting the parent-child relationship. The ECtHR held that this “*lapse of time was excessive*”, and that “*notwithstanding the margin of appreciation left to the respondent State in this area, the Court considers that the national authorities did not give due*

³⁷ [MA v Denmark](#) [GC], no 6697/18, 9 July 2021, paras 131-135.

³⁸ Paragraph 401; 403(b) of the Immigration Rules in force until 30.01.24 (**‘Part 14’**); paragraph S3.1 of Appendix Statelessness (**‘App S’**).

³⁹ Paragraph 403(e) of Part 14; para S3.2(a) of App S.

⁴⁰ Paragraph 403(c) of Part 14; para S3.2(b) of App S.

⁴¹ [Elsholz v Germany](#) [GC], no 25735/94, 13 July 2000, para 49.

⁴² [Elsholz v Germany](#) [GC], no 25735/94, 13 July 2000, para 43.

⁴³ [Tanda-Muzinga v France](#), no 2260/10, 10 July 2014, para 73.

⁴⁴ [Muhammad and Muhammad v. Romania](#) [GC], no. 80982/12, 15 October 2020, para 122.

consideration to the applicant's specific situation, and concludes that the decision-making process did not offer the guarantees of flexibility, promptness and effectiveness required in order to secure his right to respect for family life under Article 8 of the Convention. Accordingly, the State has failed to strike a fair balance between the applicant's interests on the one hand and its own interest in controlling immigration on the other."⁴⁵

- 3.24 The lack of flexibility involved in the process for family reunion under Appendix FM may expose family members of Stateless Persons to extended periods of separation without any due concern to other case-specific elements beyond those listed in Appendix FM, thereby resulting in a violation of the Article 8 of the ECHR. This is likely to be aggravated by the need to either pay substantial fees or go through the administratively burdensome and time-consuming process of applying for a fee waiver.

1954 Statelessness Convention and family unity

- 3.25 Although the 1954 Statelessness Convention does not explicitly mention family unity or reunification, a number of its articles provide for the protection of family members of a stateless person.⁴⁶ Family reunification is an essential aspect of facilitating the “*integration*” of stateless persons, which is provided for in Article 32 of the Statelessness Convention. The obligation to facilitate family reunification is accordingly implied in light of the object and purpose of the Convention to “*assure stateless persons the widest possible exercise of [...] fundamental rights and freedoms*”.⁴⁷ Therefore, the right to family unity is implied in the 1954 Statelessness Convention and arises from recognition as a stateless person.
- 3.26 This interpretation of family reunification deriving from a UN Convention is also supported by state practice: UNHCR emphasises in its best practice guidance that States are “*encouraged to facilitate family reunion for individuals determined to be stateless in their territory*” and provides various examples of countries that have facilitated family reunion.⁴⁸

Links between the 1954 Statelessness and 1951 Refugee Conventions⁴⁹

- 3.27 The Refugee Convention likewise does not explicitly reference the right to family reunion. However, the Final Act of the Conference of Plenipotentiaries at which it was adopted affirms that “*the unity of the family ... is an essential right of the refugee*” and *the rights granted to a refugee are extended to the members of his family*”. On that basis, it recommends that governments “*take the necessary measures for the protection of the refugee's family, especially with a view to [e]nsuring that the unity of the family is maintained*” and for “*the protection of refugees who are minors, in particular unaccompanied children and girls, with particular reference to guardianship and adoption*”.⁵⁰
- 3.28 Even though the Final Act is not a legally binding instrument, it reflects the object and purpose

⁴⁵ [Tanda-Muzinga v France](#), no 2260/10, 10 July 2014, paras 77-82.

⁴⁶ See eg [1954 Convention relating to the Status of Stateless Persons](#), Article 4 (“The Contracting States shall accord to stateless persons within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practise their religion and freedom as regards the religious education of their children.”); Schedule, para 2 (“Subject to the regulations obtaining in the country of issue, children may be included in the travel document of a parent or, in exceptional circumstances, of another adult.”).

⁴⁷ [1954 Convention relating to the Status of Stateless Persons](#), Preamble.

⁴⁸ UNHCR, [Establishing Statelessness Determination Procedures for the Protection of Stateless Persons](#), July 2020, p 20.

⁵⁰ UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, [Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons](#), 25 July 1951, A/CONF.2/108/Rev.1, p 309.

of the Refugee Convention, which should be interpreted to assure refugees the widest exercise of their rights.⁵¹ Furthermore, the UNHCR has confirmed that this recommendation is “observed by the majority of States, whether or not parties to the 1951 Convention or to the 1967 Protocol”.⁵²

- 3.29 The right to family reunion is not only accorded to refugees, but also to stateless persons due to the strong connection between the 1951 Refugee and 1954 Statelessness Conventions. The Preambles of the two Conventions contain identical commitments to assure refugees and Stateless Persons respectively the “*widest possible exercise of [...] fundamental rights and freedoms*”.⁵³ Many of the provisions are also drafted in identical terms.⁵⁴

Duty to safeguard and promote the welfare of children

- 3.30 The right to family reunion also derives from the duty to protect the best interests of the child. This duty is recognised in a number of international human rights instruments, such as the UN Convention on the Rights of the Child ‘the CRC’⁵⁷ and the International Covenant on Civil and Political Rights (‘the ICCPR’)⁵⁸. As a corollary to this general duty, the duty to facilitate family reunion is explicitly protected under Articles 9 and 10 of the CRC:

Article 9(1) provides that: “*States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.*”

Article 10(1) further provides that: “*In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.*”

- 3.31 This duty is also recognised in domestic law: Section 55 of the [Borders, Citizenship and Immigration Act 2009](#) requires the Secretary of State to carry out its functions in a way that has regard to the need to safeguard and promote the welfare of children in the UK. In order to

⁵¹ K Jastram and K Newland, [Family Unity and Refugee Protection](#) in *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection* (edited by Erika Feller, Volker Türk and Frances Nicholson, Cambridge University Press, 2003, p 570.

⁵² UNHCR, [Handbook on procedures and criteria for determining refugee status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees](#), February 2019, para 183.

⁵³ [1954 Convention relating to the Status of Stateless Persons](#), Preamble; [1951 Convention relating to the Status of Refugees](#), Preamble.

⁵⁴ See eg [1954 Convention relating to the Status of Stateless Persons](#), Articles 3, 16(1), 32; [1951 Convention relating to the Status of Refugees](#), Articles 3, 16(1), 34.

⁵⁷ [UN Convention on the Rights of the Child](#), Article 3(1) (“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”).

⁵⁸ [International Covenant on Civil and Political Rights](#), Article 24(1) (“Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.”).

discharge this duty, the Secretary of State “*must identify and consider the best interests of the child or, in a case such as the present, of children more generally and must weigh those interests against countervailing considerations*”.⁵⁹ Furthermore, the Home Office recognises that the “*statutory duty to children includes the need to demonstrate that applications are dealt with in a timely and sensitive way where children are involved*”.⁶⁰

- 3.32 In a number of concluding observations, the UN Committee on the Rights of the Child (*UNCRC*) recognises that the practice in some countries of failing to ensure family reunification or permitting it with unnecessarily restrictive conditions constitutes a serious “*protection gap*” faced by children.⁶¹ For example, in its Concluding Observations on Poland, the *UNCRC* criticises the procedures on family reunification for not being “physically and economically accessible” by applicants and imposing excessively demanding requirements for documentation and physical verification of applications. The *UNCRC* accordingly recommends Poland to “[t]ake all necessary measures to safeguard the principle of family unity for refugees and their children, including by making administrative requirements for family unification more flexible and affordable”.⁶²
- 3.33 Requiring the children of stateless persons to apply under Appendix FM in order to enter or remain in the UK with their parents is inconsistent with the duty to safeguard and promote the welfare of children and with the obligation under the *UNCRC* to facilitate the family reunification of children with their parents.
- 3.34 It is particularly concerning in this context that there appears to be a significant gap in the ability of children to apply to join or remain in the UK with their stateless parents. This is because:

Under Appendix FM, even as amended by HC246, children may only apply for entry clearance or leave to remain if one of their parents is also applying for, or has been granted, entry clearance or leave to remain under Appendix FM;

There is no other provision for the child of a stateless person, who is themselves not eligible for permission to stay under Appendix Statelessness, to apply for permission to enter or stay in the UK to be with their parent. Thus if either (a) both parents have been granted leave under Appendix Statelessness or (b) the child is seeking to join one parent granted leave under Appendix Statelessness and their other parent is not also applying for leave to enter or remain as a partner under Appendix FM, there is no route for them to join or stay with their stateless parent in the UK. This might arise where the stateless parent is widowed, separated from or otherwise estranged from the other parent. It could also arise where the other parent does not wish to reside in the UK but it is clearly in the child’s best interests to reside in the UK / with their stateless parent.

The right not to be discriminated against and the right to equal or comparable treatment as that

⁵⁹ *R. (on the application of Project for the Registration of Children of British Citizens) v Secretary of State for the Home Department* [2021] EWCA Civ 193, para 70.

⁶⁰ Home Office, [Stateless leave](#), 30 October 2019, p 6.

⁶¹ Council of Europe, [Realising the right to family reunification of refugees in Europe](#), June 2017, p 19.

⁶² *UNCRC*, “[Consideration of reports submitted by states parties under Article 44 of the Convention – Concluding Observations: Poland](#)”, 70th Session, UN Doc CRC/C/POL/CO/3-4 (2015), paras 44-45.

accorded to refugees with protected status

- 3.35 The Statement of Changes will lead to unjustified- and unjustifiable – discrimination against stateless persons as concerns their right to family reunification. In particular:

The new rules will significantly increase barriers to family reunification for stateless persons. There are marked differences in the circumstances of stateless persons and other individuals seeking family reunification via existing Appendix FM which do not justify adopting the same approach to both groups. The failure to take this into account amounts to failure to treat people in different situations differently and infringes on the prohibition of discrimination in Article 14 of the European Convention on Human Rights and.⁶³

Under the new rules applicable to stateless persons, they will have significantly reduced access to family reunification under Appendix FM compared to both the existing process under Part 14 and to the position of refugees with protection status who can apply for family reunification under Appendix Family Reunion Protection ('App FRP').⁶⁴ However, the similarities between the position of refugees and stateless persons means that this difference in treatment is not justified.

Differences between stateless persons applying for family reunion and “other applicants” applying for family reunion under Appendix FM

- 3.36 Stateless people have in the last 10 years enjoyed special family reunification rights under Part 14 which are commensurate with their particular circumstances.
- 3.37 The changes introduced by HC 246 are inconsistent with the prohibition of discrimination enshrined in Article 14 of the European Convention on Human Rights.⁶⁵ The European Court of Human Rights in *Thlimmenos v. Greece* [2000] held that the right not to be discriminated against in the enjoyment of rights guaranteed under the Convention is also violated where States fail to treat differently persons whose situations are “*significantly different*”, without providing “*an objective and reasonable justification*”.⁶⁶ In the context of the rules being proposed in the Statement of Changes (which engage Article 8 of the European Convention on Human Rights), treating stateless persons as though they are like any other applicant under the generic family reunion rules under Appendix FM is to significantly overlook the “*significantly different*”⁶⁷ set of circumstances in which a large number of stateless persons (i) arrive in the UK; and (ii) make family reunion applications. No justification for this proposed change has been provided in the Explanatory Memorandum.
- 3.38 The UN Human Rights Committee adopted a General Comment regarding the non-discrimination articles in the International Covenant on Civil and Political Rights. The Comment notes a prohibition of discrimination on grounds of ‘national origin’ and conceives

⁶³ *Thlimmenos v Greece* [ECtHR], no. 34369/97, 6 April 2000.

⁶⁴ [Appendix Family Reunion \(Protection\)](#).

⁶⁵ [European Convention on Human Rights](#), Article 14 (“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”).

⁶⁶ *Thlimmenos v Greece* [ECtHR], no. 34369/97, 6 April 2000, para 44.

⁶⁷ *Thlimmenos v Greece* [ECtHR], no. 34369/97, 6 April 2000, para 44.

of differentiated action which acknowledges a difference in condition of rights holders.⁶⁸

- 3.39 The following circumstances associated with stateless persons suggest they are in a “*significantly different*” situation from other applicants who can apply for family reunification under Appendix FM:

The grant of leave to remain to the sponsor under Part 14 (or in the future, App S) will have only been made where the Home Office accepts that there are already insurmountable obstacles to a person granted leave to remain as a stateless person being able to enjoy family life with their partner or child in another country. The stateless person is under a unique legal disability: that of having no nationality and therefore no state which has any obligation to them. It is already recognised that the stateless person has no option to live with family members elsewhere.

Stateless people and their family members, who have a high chance of being stateless themselves, are often routinely excluded from accessing formal education in their country of origin and therefore the English language requirements of Appendix FM operate unduly harshly on them. By way of example, in a report published by Stateless Journeys, it was noted that many stateless persons who arrived in Greece were illiterate and that a few hours of language classes a week was the first time they experienced any structured education; other examples are Bidoons in Kuwait and Rohingya in Malaysia, who have limited access to education.⁶⁹ Learning a foreign language and navigating complicated immigration application procedures after having limited access to education is challenging for many stateless persons;

Stateless people are often widely discriminated against in terms of employment opportunities or property ownership rights in their country of origin. In addition they will often have spent many years in a situation of limbo in the UK, lacking immigration status and therefore unable to work, rent, or travel outside the UK. This is often because they must first exhaust any possibility of obtaining refugee status before their application to remain as a stateless person can be considered by the Home Office.⁷¹ Therefore, income thresholds, such as those set out in Appendix FM, are often particularly unattainable;⁷²

Stateless people often suffer from mental and physical health issues as a result of experiencing persecution or discrimination in their country of origin, which can make pursuing certain employment opportunities difficult for them.⁷³

- 3.40 The barriers faced by stateless persons have been recognised by the Office of the UN Secretary General who noted that “*stateless persons have protection needs distinct from those of other non-citizens*”.⁷⁴ The factors which set aside a large proportion of stateless persons from other

⁶⁸ [CCPR General Comment No. 18: Non-discrimination](#), adopted 10 Nov, 1989, paras 6, 8, 13 for example.

⁶⁹ Examples: Kuwait: “I don’t have a future”: Stateless Kuwaitis and the right to education, [Amnesty International, 17 Aug 2023, MDE 17/6990/2023](#); Barriers and facilitators to education access for marginalised non-citizen children in Malaysia: A qualitative study, [2 Jun 2023](#); Stateless Journeys, [Addressing statelessness in Europe’s refugee response: Gaps and Opportunities](#), page 7.

⁷¹ [Stateless leave. Version 3.0](#), Home Office, 30 Oct 2019, page 9; and [Handbook on Protection of Stateless Persons](#), UNHCR, Geneva 2014, paras 78-82. The Home Office only updated its leaflet for asylum seekers to inform them of the possibility of making a statelessness leave application in 2023, 10 years after the procedure was introduced, and in the face of regular requests to do so from stakeholders.

⁷² UNHCR, [A Special Report: Ending Statelessness Within 10 years](#), p 14-15.

⁷³ UNHCR, [A Special Report: Ending Statelessness Within 10 years](#), p 12.

⁷⁴ UNHCR, [Statelessness Determination in the UK](#), 2020, p 16.

Appendix FM applications fall within the parameters set out in *Thlimmenos v. Greece* [2000] and as such treating them the same as HC 246 proposes to do from 31 January 2024 amounts to unlawful discrimination.

Equal treatment: similarities between stateless persons and refugees in their need for bespoke family reunification route

- 3.41 Although refugees and stateless persons have different legal status, there are several factual and legal reasons for having comparable family reunification application routes for both groups. Crucially, in contrast to the requirements under Appendix FM, pre-flight family members of a person holding protection status as a refugee do not need to satisfy any financial, accommodation or English language requirements.⁷⁵
- 3.42 The UNHCR recommends ensuring that all beneficiaries of any form of protection have access to family reunification on the same basis and under the same favourable rules as refugees, and particularly not subjecting non-refugees to additional self-sufficiency requirements or mandatory waiting periods as Appendix FM does.⁷⁶ This is strong support for treating stateless persons with lawful residence in the UK at least as favourably as refugees.
- 3.43 The ECtHR has established that where a State enacts legislation conferring rights to certain categories of immigrants, it must do so in a manner compatible with the non-discrimination principle.⁷⁷
- 3.44 The routes available need not be identical but they should be comparable in that they are both distinct from the generic routes available under Appendix FM and take into account the factors uniquely relevant to stateless persons and refugees as the Government does under the existing regimes. Two key factors that suggest a common or comparable bespoke approach to family reunification should be taken to both Stateless individuals currently eligible under Part 14 and refugees are:

Common causes in the events or set of circumstances resulting in an individual being either stateless or a refugee; and

the Government's policy objectives in respect of refugee family reunification are applicable to stateless persons too.

Common causes of an individual becoming stateless or a refugee

- 3.45 Firstly, the reasons individuals become refugees or stateless persons often have a common root cause. The Office of the UN Secretary General recognises that discrimination (against racial/ethnic groups, religious/linguistic minorities and women) is both a common root cause and consequence of statelessness.⁷⁸ Being stateless often leads to further human rights violations, such as limited access to birth registration, identity documents, education, health care, property ownership, political participation and freedom of movement.⁷⁹ This ostracisation from mainstream society makes stateless persons more vulnerable to abuse, arbitrary detention,

⁷⁵ Home Office, [Family reunion: for individuals with protection status in the UK](#), 17 July 2023, p 11.

⁷⁶ UNHCR, [Families Together – Family Reunification in Europe for Refugees](#), December 2018, p 31.

⁷⁷ *Hode and Abdi v the United Kingdom*, no 22341/09, 6 November 2012.

⁷⁷ *Hode and Abdi v the United Kingdom*, no 22341/09, 6 November 2012.

⁷⁸ UNHCR, [Statelessness Determination in the UK](#), 2020, p 16.

⁷⁹ Ibid.

discriminatory treatment and trafficking.⁸⁰

Policy objectives in respect of refugee family reunification rules apply to stateless persons

- 3.46 The Home Office's own stated policy objectives which enable a special route for family reunification for those granted refugee protection status under Appendix FRP apply to many stateless persons too. Notably the Home Office has stated in its July 2023 guidance on family reunion for individuals with protection in the UK which is published for Home Office staff: *"the policy objective is primarily to deliver a fair and effective refugee family reunion application process, which supports the principle of family unity."*⁸¹ The principle of family unity applies as much to stateless persons as it does to refugees with protected status.
- 3.47 Further the Home Office follows that policy objective by setting out several actions it takes in support of it, including *"acknowledging the speed and manner in which families may become separated by conflict and persecution, recognising the stress this may cause and providing a means for immediate family members to reunite in the UK"*.⁸² As set out above, conflict and persecution are often the reasons an individual is stateless and it should be recognised that stateless persons also experience stress and harm from being separated from their family and a bespoke family reunification route should be available to them which recognises that and aims to address it.

4. Part III: Concerns about changes to validity requirements for stateless applicants for leave to remain

(C) a 'validity' requirement for the applicant to have satisfactorily established their identity

- 4.1 Paragraph 34 (5) (c) of the Immigration Rules, which interprets the Rules generally, allows certain categories of applicants to apply for leave to enter or remain without 'proof of identity'. The existing list includes:

(v) the application is made under Part 14 of these Rules for leave as a stateless person or as the family member of a stateless person

- 4.2 Under the new Appendix Statelessness, the applicant must, before the application is even accepted for consideration 'satisfactorily establish their identity' (S1.2 (b)). If they do not, the application for leave to remain will be rejected as invalid (S1.3). The only remedy for challenging a rejection is Judicial Review, which is costly and time-consuming for all parties. An alternative would be to re-apply with better evidence but that may not be an option. Amended para 34 (5) (c) will read:

(v) the application is made under Part 14 of these rules, for leave as the family member of a stateless person⁸³

- 4.2 Other relevant exceptions continue without amendment:

(vi) the application was made by a person in the UK with refugee leave or humanitarian protection; or

(vii) the applicant provides a good reason beyond their control why they cannot provide

⁸⁰ Ibid.

⁸¹ Home Office, Family reunion: for individuals with protection status in the UK, 17 July 2023, p 7.

⁸² Home Office, Family reunion: for individuals with protection status in the UK, 17 July 2023, p 7.

⁸³ [Statement of Changes to the Immigration Rules \(HC 246\)](#), 7 December 2023, para 1.8

proof of their identity

Validity: The loss of substantive consideration of an application for statelessness leave without having first ‘established identity’

- 4.3 New Appendix S is drafted so that a stateless person, who is very likely to have no personal identity documentation, and whose birth may never even have been registered, must now satisfactorily ‘establish their identity’ **before** their application for leave to remain will even be considered. Asylum Aid and Liverpool Law Clinic know of several examples of undocumented stateless persons whose applications were at first refused on the basis that they did not ‘establish their true identity’. Their representatives have had to use the Administrative Review procedure to obtain re-considerations, which were followed by a grant of leave to remain.
- 4.4 This will no longer be possible under the new rules if the application is judged to be invalid because of failure to ‘establish identity’. The only remedy will be Judicial Review. This is a backwards step on a point which is particularly likely to impact stateless persons. Judicial review is costly, time consuming and inappropriate where validity is the first point where an application can be rejected. It is not in accordance with the policy intention of App S, which is to provide protection to stateless persons.
- 4.5 Lastly, a requirement to ‘establish identity’ is not even an appropriate ‘validity’ requirement, which should be reserved for procedural, not substantive, elements of an application.

No evidence has been produced by the Statelessness Determination team to support a need for such a fundamental change in approach to these applications.

5. Part IV- Annex: Detailed explanation of the Immigration Rules for family members of stateless persons

Permission to stay as a stateless person – Part 14 of the Immigration Rules (until 30.01.2024)

- 5.1 In order to be granted permission to stay as a stateless person under Part 14, as well as establishing that they are stateless within the meaning of the 1954 Statelessness Convention, a person must show that they:
- have taken reasonable steps to facilitate admission to their country of former habitual residence or any other country but have been unable to secure the right of admission;
 - have sought and failed to obtain or re-establish their nationality with the appropriate authorities of the relevant country; and,
 - in the case of a child born in the UK, have provided evidence that they have attempted to register their birth with the relevant authorities but have been refused.⁹³
- 5.2 They are also required to meet suitability criteria,⁹⁴ and may be excluded from recognition as a stateless person on grounds including that they are already receiving assistance from another United Nations agency; that they have the protection of their country of former habitual

⁹³ Paragraph 403 of the Immigration Rules.

⁹⁴ Paragraph 404(b) and (c) of the Immigration rules.

residence equivalent to nationality; or that they have committed serious non-political crimes, war crimes or crimes against humanity.⁹⁵

Appendix Statelessness – from 31.01.2024

- 5.3 Appendix Statelessness applies broadly the same criteria for a grant of permission to stay, including validity (paras S1.1-1.3), suitability (paras S2.1-2.3) and eligibility requirements. The eligibility requirements are that the person;

Is not considered a national by any state under operation of its law (para S3.1)

Has taken all reasonable steps but failed acquire or re-acquire nationality of any relevant country;

Has taken all reasonable steps but failed to establish a right to admission as a permanent resident, or a status leading to permanent residence, in any relevant countries;

If they are a child, their parent or legal guardian must have taken all reasonable steps to register their birth with the relevant authorities and been unsuccessful.

Existing requirements under Part 14 for family members

- 5.4 Currently, under Part 14, a partner or child of a Stateless Person could be granted leave to enter or remain as the family member of a Stateless Person for up to five years if they satisfied the following requirements:⁹⁶

they made a valid application to the Secretary of State for leave to enter or remain as the family member of a Stateless Person;

they are the family member⁹⁷ of a person granted leave to remain; and

if they are seeking leave to enter, hold a valid UK entry clearance for entry in this capacity.⁹⁸

Requirements under Appendix FM

- 5.5 Appendix FM provides two routes for settlement on the basis of family life as a partner or parent:

the 5-year route is for a partner, parent or child who meets all the suitability and eligibility requirements of the Immigration Rules at every stage; and

the 10-year route is for:

- (i) a partner, parent or child who meets all family life suitability and certain eligibility requirements and EX.1. applies under Appendix FM; or
- (ii) those who have exceptional circumstances.

⁹⁵ Paragraph 402 of the Immigration Rules.

⁹⁶ [Part 14 Immigration Rules](#), para 413.

⁹⁷ A “family member” refers to: a (i) spouse; (ii) civil partner; (iii) unmarried partner with whom they have lived together in a subsisting relationship akin to marriage or a civil partnership for two years or more; or (iv) child under 18 years of age who: (a) is not leading an independent life; (b) is not married, in a civil partnership or has an unmarried partner with whom they have lived together in a subsisting relationship akin to marriage or a civil partnership for two years or more; and (c) has not formed an independent family unit ([Part 14 Immigration Rules](#), para 410).

⁹⁸ [Part 14 Immigration Rules](#), para 411.

5.6 Applications under App FM are assessed using a two-stage approach:

First, if an applicant meets the general, suitability and eligibility requirements of the relevant Immigration Rule, without consideration of exceptional circumstances under paragraph GEN.3.1 and GEN.3.2. of Appendix FM, then leave should be granted on a 5 or 10-year route.

Second, if such requirements are not met, then consideration is given to whether in the light of all the information and evidence provided by the applicant, there are exceptional circumstances which could or would render refusal a breach of ECHR Article 8 because it would result in unjustifiably harsh consequences for the applicant, their partner, a relevant child or another family member whose Article 8 rights it is evident from the information provided by the applicant would be affected. If such exceptional circumstances, and any other relevant requirements are met, leave to remain should be granted on a 10-year route to settlement (as a partner, parent or child under Appendix FM).⁹⁹

5.7 The general provisions are set out in paragraphs GEN.1.1. to GEN.3.3. of Appendix FM. The key point here is that this route is for family members seeking to enter or remain in the UK with a person who is a British Citizen, is settled in the UK, is in the UK with protection status, is in the UK with limited leave under Appendix EU, is in the UK with limited leave as a worker or business person by virtue of either Appendix ECAA Extension of Stay or under the provisions of the relevant 1973 Immigration Rules (or Decision 1/80) that underpinned the European Community Association Agreement (ECAA) with Turkey prior to 1 January 2021,¹⁰⁰ or, from 31 January 2024, is in the UK with permission as a Stateless Person.¹⁰¹

5.8 The suitability requirements are set out in paragraphs S-EC.1.1. to S-EC.3.2. (entry clearance) or S-LTR.1.1. to S-LTR.4.5 (leave to remain). These paragraphs set out the grounds for refusal of entry clearance / leave to remain due to factors such as: the applicant being currently the subject of a deportation order, exclusion of the applicant is conducive to the public good because of past criminal convictions etc.

Partners

5.9 The general eligibility requirements that must be met by a partner are set out in E-ECP.2.1. to E-ECP.2.10 (entry clearance) or E-LTRP.1.2. to E-LTRP.1.12 (leave to remain). This includes requirements such as a minimum age, that couples must have met in person and that their partner is in the UK with a relevant immigration status (para E-ECP.2.1 and E-LTRP.1.2, which will include with permission to stay under Appendix Stateless after its introduction).

5.10 In order for a partner to qualify for entry clearance or leave to remain on a 5-year route, they must also meet three (or in the case of applications for leave to remain, four) further requirements:

Financial:¹⁰² The applicant must provide specified evidence of:

(a) specified gross annual income of at least –

⁹⁹ Home Office, [Family Policy: Family life \(as a partner or parent\) and exceptional circumstances](#), 15 May 2023, pp 14-15.

¹⁰⁰ [Appendix FM](#), GEN.1.1.

¹⁰¹ [Statement of Changes to the Immigration Rules \(HC 246\)](#), 7 December 2023, para APP FM1.

¹⁰² [Appendix FM](#), E-ECP.3.1. (entry clearance) and E-LTRP.3.1. (leave to remain).

(i) £18,600;¹⁰³

(ii) an additional £3,800 for the first child; and

(iii) an additional £2,400 for each additional child; alone or in combination with:

(b) specified savings of –

(i) £16,000; and

(ii) additional savings of an amount equivalent to 2.5 times the amount which is the difference between the gross annual income, and the total amount required under (i) above; or

(iii) receives benefits such as a disability living allowance or carer's allowance and is able to provide evidence that their partner is able to maintain and accommodate themselves, the applicant and any dependants adequately in the UK without recourse to public funds.¹⁰⁴

Accommodation: The applicant must provide evidence that there will be adequate accommodation in the UK, without recourse to public funds, for the family, including other family members who are not included in the application but who live in the same household, which the family own or occupy exclusively: accommodation will not be regarded as adequate if – (a) it is, or will be, overcrowded; or (b) it contravenes public health regulations.¹⁰⁵

English language:¹⁰⁶ The applicant must provide specified evidence that they:

Immigration Status (for applications from within the UK only): the applicant must not be:

(a)

in the UK as a visitor or with leave granted for 6 months or less (unless granted as a fiancé or proposed civil partner or pending the outcome of family court or divorce proceedings);¹⁰⁸

(b) on immigration bail, unless they arrived more than 6 months before the application and exceptional circumstances apply;¹⁰⁹

(c) in breach of immigration laws, unless exceptional circumstances apply.¹¹⁰

5.11 The 'exceptional circumstances' requirements which apply to an applicant for leave to remain under the partner route who cannot meet certain of the eligibility requirements are contained

¹⁰³ Note the rise in income level to £38,700 over the next 15 months: <https://commonslibrary.parliament.uk/research-briefings/cbp-9920/#:~:text=The%20spouse%2Fpartner%20visa%20minimum,38%2C700%20%E2%80%9Cin%20early%202025%E2%80%9D.>

¹⁰⁴ [Appendix FM](#), E-ECP.3.3. (entry clearance) and E-LTRP.3.3. (leave to remain).

¹⁰⁵ [Appendix FM](#), E-ECP.3.4. (entry clearance) and E-LTRP.3.4. (leave to remain).

¹⁰⁶ [Appendix FM](#), E-ECP.4.1. (entry clearance) and E-LTRP.4.1. (leave to remain).

¹⁰⁸ [Appendix FM](#), E-LTRP.2.1 (leave to remain).

¹⁰⁹ [Appendix FM](#), E-LTRP.2.2(a) (leave to remain)

¹¹⁰ [Appendix FM](#), E-LTRP.2.2(b) (leave to remain)

in EX.1 and apply where:

The applicant has a genuine and subsisting relationship with a child who is in the UK and is either British or has been living in the UK for at least 7 years, and it would not be reasonable to expect the child to leave the UK; or

There are insurmountable obstacles to family life with a partner continuing outside the UK. “Insurmountable obstacles” means the very significant difficulties which would be faced by the applicant or their partner in continuing their family life together outside the UK and which could not be overcome or would entail very serious hardship for the applicant or their partner.¹¹¹

Child

- 5.12 The eligibility requirements that must be met by a child of a parent applying under Appendix FM for entry clearance or leave, or who has a limited leave, as a partner or parent are set out in E-ECC.A1.1. to E-ECC.2.4. (entry clearance) or E-LTRC.1.2. to E-LTRC.2.4. (leave to remain). Significantly, where a parent of the applicant has, or is applying or has applied for, limited leave to remain as a partner under Appendix FM, the applicant must satisfy the financial and accommodation requirements that a partner would be subject to (see para 1.14 above).¹¹⁶

¹¹¹ [Appendix FM](#), EX.2 (leave to remain)

¹¹⁶ [Appendix FM](#), E-ECC.2.1.- E-ECC.2.4. (entry clearance) and E-LTRC.2.1.- E-LTRC.2.4. (leave to remain).

Further information from the Home Office

Q1: In relation to the settlement criteria for partners and children, the submission describes the new criteria (under Appendix FM) as “far more stringent” than the existing criteria under Part 14 of the Immigration Rules. This is a result of the additional fees payable as well as the suitability, English language and financial requirements referred to in your previous answer below, especially bearing in mind that application fees, the IHS and family income requirement have all been subject to large increases either recently or in the near future, and because repeat applications will be needed every 30 months (with associated costs). Is it the policy intent that the criteria should be “far more stringent”? Is this a fair characterisation?

A1: No, the statelessness route is designed solely to grant permission to stay to individuals who are stateless and who do not hold or have the ability to avail themselves of citizenship or residency anywhere else. Whilst requiring a dependant partner or child to apply under Appendix FM means they need to meet additional requirements (compared the dependant route under part 14) we consider this policy change will achieve greater consistency across immigration routes to the UK. Family members of a stateless person may also apply for permission to stay as a stateless person under Appendix Statelessness if they are also stateless.

Q2: The submission argues that there is a “significant omission” in relation to children who are not themselves stateless but whose parents are stateless persons. For example, the submission states that if both parents are eligible for leave as stateless persons – and therefore not under Appendix FM – there is “no route” for the child to apply for leave because children may only apply for entry clearance or leave to remain if one of their parents is also applying for, or has been granted, entry clearance or leave to remain under Appendix FM. Is this correct? If not, please explain why.

A2: Where there are challenges or the inability for a child of a stateless person to re-establish themselves in another country, they can apply to stay in the UK or join a relative under the family rules in Appendix FM. To meet the core requirements in Appendix FM, the parent must also have permission under Appendix FM but where the child does not meet the core requirements, the caseworker will consider whether there are exceptional circumstances which would render a refusal a breach Article 8 of the ECHR.

Q3: In the Impact Assessment for the IHS increase, the Government stated that “There are a range of exemptions from payment of the IHS. These exemptions are broadly based on UK treaty obligations, international agreements and previous ministerial commitments. The exemptions from charge include protection cohorts such as asylum seekers, victims of human trafficking and stateless individuals”. Could you please explain what the relevant “treaty obligations, international agreements and previous ministerial commitments” were in relation to stateless persons and why they should no longer apply? Was the IA for the IHS increase was misleading in committing to keep the exemption from the charge for stateless persons? Is there any intention to change the position of other cohorts such as asylum seekers or victims of human trafficking?

A3: A stateless person will continue to be exempt from the IHS. A partner or child of a stateless person applying under Appendix FM will need to pay the IHS or obtain a fee waiver. There are currently no plans to change the IHS policy for asylum seekers or victims of human trafficking.

Q4: The submission states that the “vast majority” of stateless persons, by the nature of being in such a position, are unlikely to meet the criteria and would therefore need to rely on “exceptional circumstances” and/or that the refusal of leave would breach the right to respect for family life under the ECHR. Is this also your expectation?

A4: As Appendix Statelessness does not come into force until the 31 January, we do not know the proportion of applicants who will not meet the core criteria. We anticipate that some dependants of a stateless person may not be able to meet the financial or English language requirements and will need to rely on an Article 8 exceptional circumstances test under Appendix FM.

Q5: Under the transitional provisions, any partners or children who currently have permission under Part 14 will continue to be able to extend their permission or settle in the UK after the new Rules come into force. However, a family member seeking permission to join or remain in the UK with a stateless person who applied for, or was granted, permission to stay under Part 14 before 31 January 2024 will now be required to apply under Appendix FM. The submission describes this as “unfair to those who have been granted Part 14 leave with the expectation of family reunion under those requirements” and argues that affected people will not be aware of the changes and will continue to believe their family can apply under the Part 14 rules. Could you please comment on this argument and on the perceived unfairness?

A5: We do not consider this is unfair. Our expectation is that any individual who applied for, or was granted, permission to stay under Part 14 before 31 January would have included any partner or child already in the UK on their stateless application as a dependent. Gov.uk information pages on permission to stay as a stateless person and policy guidance will make clear the distinction between Part 14 Rules and Appendix Statelessness, and the most appropriate route for every applicant.

Q6: The submission argues extensively that the new Rules breach the ECHR and other international conventions; for example, the 1954 Statelessness Convention. It suggests that breaches include: on the right to family unity and family life; on the duty to safeguard and promote the welfare of children; discrimination as compared to refugees with protected status; failure to recognise the “significantly different” status of statelessness persons as compared to other applicants under the generic family reunion rules. Are you satisfied that the changes are compatible with international obligations and what steps have you taken to verify that?

A6: We are confident our changes are compatible with international obligations such as the UN Statelessness Conventions and the ECHR. A caseworker must consider for example whether refusal would breach Article 8 ECHR as part of an Appendix FM application, therefore there is still a path for families to reunite or stay together. We separately engaged with interested stakeholders and sought legal advice in advance of laying Appendix Statelessness.

Q7: The submission argues that the new requirement that a stateless person must now ‘establish their identity’ before their application for leave to remain can be considered is not compatible with the policy intention of providing protection to stateless person, particularly given that the only appeal route is via Judicial Review. Please comment. The submission also states that stateless people are “very likely to have no personal identity documentation”. Do you agree?

A7: The statelessness rules laid on 7 December are in the revised simplified format which include the validity requirements in the route. The standard validity requirement is “the applicant must have provided a passport or other travel document which satisfactorily establishes their identity and nationality” but this was amended to “the applicant must have satisfactorily established their identity” as we are aware that stateless applicants may not be able to provide specified identity document. There is discretion at S.1.3 to accept applications as valid where one or more of the validity criteria is not met. Furthermore, the statelessness guidance will be updated to include

specific guidance for statelessness applicants on how they may be able to meet this requirement, recognising the fact that some individuals will be undocumented.

Q8: You state [in A7] that “the statelessness guidance will be updated to include specific guidance for statelessness applicants on how they may be able to meet this requirement, recognising the fact that some individuals will be undocumented”. Has this guidance been published yet and, if not, when is this expected?

A8: The Statelessness guidance will be published on 31 January when that Rules change goes live.

Q9: Do we have figures for numbers of applicants and success rate for the last year or two and has the Department offered an impact assessment of the numbers expected to apply and succeed as a result of the changes?

A9: We do not currently publish statistics on the number of stateless applications or decisions, but we plan to include this in future data releases. We regularly share information with UNHCR on stateless applications and decisions made, which is published by UNHCR, in regular trend reports.

10, 11 and 16 January 2024