

UNHCR Observations on the Proposal for amendments to the Danish Aliens Act, the Return Act, the Criminal Code and various other acts and on the repeal of the Continuation of Rights Act in connection with the withdrawal of the United Kingdom from the European Union without an agreement (Follow-up on EU legislation, repeal of the Brexit Civil Code etc.) (UIM Id:2208098)

[Forslag til lov om ændring af udlændingeloven, hjemrejseloven, straffeloven og forskellige andre love og om ophævelse af lov om videreførelse af rettigheder i forbindelse med Det Forenede Kongeriges udtræden af Den Europæiske Union uden en aftale (Opfølgning på EU-lovgivning, ophævelse af Brexit-borgerloven m.v.)]

I. Introduction

1. The United Nations High Commissioner for Refugees (“UNHCR”) Representation for the Nordic and Baltic Countries (“RNB”) appreciates the invitation by the Government of Denmark to provide observations on the “Proposal for amendments to the Danish Aliens Act, the Return Act, the Criminal Code and various other acts and on the repeal of the Continuation of Rights Act in connection with the withdrawal of the United Kingdom from the European Union without an agreement (Follow-up on EU legislation, repeal of the Brexit Civil Code etc.)” [*Forslag til lov om ændring af udlændingeloven, hjemrejseloven, straffeloven og forskellige andre love og om ophævelse af lov om videreførelse af rettigheder i forbindelse med Det Forenede Kongeriges udtræden af Den Europæiske Union uden en aftale (Opfølgning på EU-lovgivning, ophævelse af Brexit-borgerloven m.v.)*] - hereafter the “Proposal”.¹
2. UNHCR has a direct interest in law proposals related to asylum, as the agency entrusted by the UN General Assembly with the mandate to provide international protection to refugees and, together with Governments, seek permanent solutions to the problems of refugees.² Paragraph 8 of UNHCR’s Statute confers responsibility on UNHCR for supervising international conventions for the protection of refugees,³ whereas the 1951 Convention relating to the Status of Refugees⁴ and its 1967 Protocol (hereafter collectively referred to as “1951 Convention”) oblige State Parties to cooperate with UNHCR in the exercise of its mandate, in particular facilitating UNHCR’s duty of supervising the application of the provisions of the 1951 Convention (Article 35 of the 1951 Convention and Article II of the 1967 Protocol). This has also been reflected in European Union (“EU”) law, including by way of reference to the 1951 Convention in Article 78(1) of the Treaty on the Functioning of the EU. The UN General Assembly has also entrusted UNHCR with a global mandate to provide protection to stateless persons world-wide and for preventing and reducing statelessness.⁵

¹ Full Proposal (in Danish) <https://www.dnz-ft.dk/samling/20222/almdele/UUI/bilag/21/2655029.pdf>

² UN General Assembly, Statute of the Office of the United Nations High Commissioner for Refugees, 14 December 1950, A/RES/428(V) <https://www.refworld.org/docid/3ae6b3628.html> (“the Statute”).

³ Ibid, para. 8(a). According to para. 8(a) of the Statute, UNHCR is competent to supervise international conventions for the protection of refugees. The wording is open and flexible and does not restrict the scope of applicability of the UNHCR’s supervisory function to one or other specific international refugee convention. UNHCR is therefore competent qua its Statute to supervise all conventions relevant to refugee protection, UNHCR’s supervisory responsibility, October 2002 <http://www.refworld.org/docid/4fe405ef2.html>, pp. 7–8.

⁴ UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations Treaty Series, No. 2545, vol. 189 <http://www.unhcr.org/refworld/docid/3be01b964.html>. According to Article 35 (1) of the 1951 Convention, UNHCR has the “duty of supervising the application of the provisions of the Convention”.

⁵ UN General Assembly Resolution A/RES/50/152, 9 February 1996 <http://www.unhcr.org/refworld/docid/3b00f31d24.html>, reiterated in subsequent resolutions, including A/RES/61/137 of 25 January 2007 <http://www.unhcr.org/refworld/docid/45fa902d2.html>, A/RES/62/124 of 24 January 2008 <http://www.unhcr.org/refworld/docid/47b2fa642.html>, and A/RES/63/148 of 27 January 2009 <http://www.unhcr.org/refworld/docid/4989619e2.html>.

3. UNHCR’s observations are structured as follows: Section II sets out the scope of the particular areas of the Proposal relevant for the purpose of UNHCR’s observations, and Section III sets out observations on a) Denmark’s international obligations under the 1951 Convention and other international instruments in connection to the transfer of asylum-seekers for adjudication of asylum claims and accommodation in third countries, and b) Denmark’s international obligations under the 1961 Convention on the Reduction of Statelessness, the Convention on the Rights of the Child and other relevant international instruments.

II. The Scope of the Proposal addressed in these Observations

4. Act No. 1191 of 8 June 2021 constitutes the legal basis in Danish law for the transfer of asylum-seekers to third countries for asylum processing and accommodation. Transfers will take place to third countries for asylum processing under an arrangement that Denmark has concluded with one or several countries. The Act only enters into force if an agreement has been entered with a third country. As Denmark has not entered such an agreement with a third country, the Act has not yet entered into force. The Proposal seeks to repeal § 3, subsection 2 of the Act which is a sunrise clause allowing the Minister of Immigration and Integration to submit a proposal for revision of the Act if it has not yet entered into force by the end of 2022. By repealing the sunrise clause, the Proposal seeks to maintain the validity of the Act in its unchanged form, thereby removing the need for the Minister to propose a reconsideration of the Act if it has not yet entered into force.⁶
5. According to current practice in applying section 1, subsection 1 of the Citizenship Act, a person is considered not to have acquired Danish citizenship at birth if it is established that the conditions which formed the basis for the acquisition of Danish citizenship were not initially fulfilled. The provision in its current form means that a child under the age of 18 years, or a person above the age of 18 years, who is determined not to have acquired Danish citizenship at birth, in absence of another nationality, becomes stateless. The Proposal seeks to introduce a new provision (section 5.2) to the Danish Citizenship Act to ensure that a person maintains their Danish citizenship if, at the time they were determined not to be Danish citizens, they would become stateless.⁷ The Proposal therefore aims to safeguard against situations leading to statelessness and ensuring that Danish law is in line with Article 7(1)f and 7(3) of the Council of Europe Convention on Nationality of 6 November 1997 (“European Convention on Nationality”).⁸

⁶ Proposal, pp. 74-76

⁷ Proposal, pp. 64-71

⁸ Council of Europe, *European Convention on Nationality*, 6 November 1997, ETS 166, <https://www.refworld.org/docid/3ae6b36618.html>

III. UNHCR's Observations

On the proposed amendments to Act No. 1191 of 8 June 2021: repeal of § 3, subsection 2

6. UNHCR provided substantive comments during the hearing process before Act No. 1191 of 8 June 2021 was enacted. The comments submitted by UNHCR on 8 March 2021⁹ during the hearing process remain fully relevant also for any amendment of the said Act. The Ministry is invited to review these comments as part of the hearing process for the proposed amendment.

7. Of particular relevance are paragraphs 5 and 6 in UNHCR's comments:

“ ...

5. In UNHCR's view, the Proposal does not sufficiently detail and elaborate on the proposed arrangements to enable an informed assessment on the compliance with Denmark's international obligations under the 1951 Convention and other international and regional human rights instruments and EU law. It is doubtful whether a full end-to-end process with all requirements spelled out would be in line with international obligations, including when implemented in practice.

6. UNHCR is concerned that the Proposal does not address, or leaves subject to further regulation, relevant details on how the proposed model would be implemented in practice, including: 1) how the prospective arrangements with third countries are going to guarantee that Denmark, as well as the third countries, will adhere to obligations under international law, in practice; 2) what adequate reception conditions, asylum procedures, legal status, rights and services and durable solutions will be accessible in the third country; 3) what categories of asylum-seekers will be exempted from transfer; 4) how the transfers will be, concretely and in practice, sequenced with the procedure under the Dublin system and 5) what effective remedies will be available for individuals affected by transfer in case they need to challenge conduct by Danish authorities prior to, during or after transfer, as well as conduct by the authorities in the third country. In UNHCR's view, such fundamental aspects cannot be left to be regulated in agreements, which may not be subject to parliamentary review.”

On the proposed amendment to the Citizenship Act: introducing a new provision to safeguard against statelessness

8. UNHCR welcomes the proposal to amend the Citizenship Act to safeguard against statelessness for persons whose basis for acquisition of Danish citizenship subsequently has been found not to have been present at the time of determination. The amendment is motivated by ensuring Danish law is aligned with, *inter alia*, Article 7 of the European Convention on Nationality.

9. When considering the international obligations relevant for the consideration of this Proposal, UNHCR suggests that Denmark further considers obligations which follow from the 1961 Convention on the Reduction of Statelessness (“1961 Convention”)¹⁰ and other relevant international human rights instruments. UNHCR also encourages Denmark to consider expanding safeguards against statelessness,

⁹ UNHCR Observations on the Proposal for amendments to the Danish Aliens Act (Introduction of the possibility to transfer asylum-seekers for adjudication of asylum claims and accommodation in third countries), 8 March 2021 <https://www.refworld.org/docid/6045dde94.html>

¹⁰ UN General Assembly, *Convention on the Reduction of Statelessness*, 30 August 1961, United Nations, treaty Series, vol. 989, p. 175, <https://www.refworld.org/docid/3ae6b36618.html>

thereby ensuring every individual's right to a nationality and avoiding new cases of statelessness on the territory of Denmark.

10. With regard to the introduction of an age or time limit, beyond which a re-determination of acquisition of nationality should not be permitted under the law, UNHCR encourages Denmark to introduce an age or time limit as per the good practice implemented by Finland¹¹ to ensure this procedure is accessible as soon as possible after birth. This would also be in line with the best interest of the child as per Article 3 and 7 of the Convention on the Rights of the Child.¹²

11. UNHCR remains available to discuss these observations with the Ministry.

UNHCR Representation for the Nordic and Baltic Countries

1 March 2023

¹¹ Proposal, p. 68

¹² UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, <https://www.refworld.org/docid/3ae6b38f0.html>