

Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community

PART TWO

CITIZENS' RIGHTS

TITLE I

GENERAL PROVISIONS

Article 9

Definitions

For the purposes of this Part, and without prejudice to Title III, the following definitions shall apply:

- (a) "family members" means the following persons, irrespective of their nationality, who fall within the personal scope provided for in Article 10 of this Agreement:
 - (i) family members of Union citizens or family members of United Kingdom nationals as defined in point (2) of Article 2 of Directive 2004/38/EC of the European Parliament and of the Council⁽¹⁾;
 - (ii) persons other than those defined in Article 3(2) of Directive 2004/38/EC whose presence is required by Union citizens or United Kingdom nationals in order not to deprive those Union citizens or United Kingdom nationals of a right of residence granted by this Part;
- (b) "frontier workers" means Union citizens or United Kingdom nationals who pursue an economic activity in accordance with Article 45 or 49 TFEU in one or more States in which they do not reside;
- (c) "host State" means:
 - (i) in respect of Union citizens and their family members, the United Kingdom, if they exercised their right of residence there in accordance with Union law before the end of the transition period and continue to reside there thereafter;
 - (ii) in respect of United Kingdom nationals and their family members, the Member State in which they exercised their right of residence in accordance with Union law before the end of the transition period and in which they continue to reside thereafter;
- (d) "State of work" means:
 - (i) in respect of Union citizens, the United Kingdom, if they pursued an economic activity as frontier workers there before the end of the transition period and continue to do so thereafter;

- (ii) in respect of United Kingdom nationals, a Member State in which they pursued an economic activity as frontier workers before the end of the transition period and in which they continue to do so thereafter;
- (e) "rights of custody" means rights of custody within the meaning of point (9) of Article 2 of Council Regulation (EC) No 2201/2003⁽²⁾, including rights of custody acquired by judgment, by operation of law or by an agreement having legal effect.

Article 10

Personal scope

- 1 Without prejudice to Title III, this Part shall apply to the following persons:
- a Union citizens who exercised their right to reside in the United Kingdom in accordance with Union law before the end of the transition period and continue to reside there thereafter;
 - b United Kingdom nationals who exercised their right to reside in a Member State in accordance with Union law before the end of the transition period and continue to reside there thereafter;
 - c Union citizens who exercised their right as frontier workers in the United Kingdom in accordance with Union law before the end of the transition period and continue to do so thereafter;
 - d United Kingdom nationals who exercised their right as frontier workers in one or more Member States in accordance with Union law before the end of the transition period and continue to do so thereafter;
 - e family members of the persons referred to in points (a) to (d), provided that they fulfil one of the following conditions:
 - (i) they resided in the host State in accordance with Union law before the end of the transition period and continue to reside there thereafter;
 - (ii) they were directly related to a person referred to in points (a) to (d) and resided outside the host State before the end of the transition period, provided that they fulfil the conditions set out in point (2) of Article 2 of Directive 2004/38/EC at the time they seek residence under this Part in order to join the person referred to in points (a) to (d) of this paragraph;
 - (iii) they were born to, or legally adopted by, persons referred to in points (a) to (d) after the end of the transition period, whether inside or outside the host State, and fulfil the conditions set out in point (2)(c) of Article 2 of Directive 2004/38/EC at the time they seek residence under this Part in order to join the person referred to in points (a) to (d) of this paragraph and fulfil one of the following conditions:
 - both parents are persons referred to in points (a) to (d);
 - one parent is a person referred to in points (a) to (d) and the other is a national of the host State; or
 - one parent is a person referred to in points (a) to (d) and has sole or joint rights of custody of the child, in accordance with the applicable rules of family law of a Member State or of the United Kingdom, including applicable rules of private international law under which rights of custody established under the law of a third State are recognised in the Member State or in the United Kingdom,

in particular as regards the best interests of the child, and without prejudice to the normal operation of such applicable rules of private international law⁽³⁾;

- f family members who resided in the host State in accordance with Articles 12 and 13, Article 16(2) and Articles 17 and 18 of Directive 2004/38/EC before the end of the transition period and continue to reside there thereafter.

2 Persons falling under points (a) and (b) of Article 3(2) of Directive 2004/38/EC whose residence was facilitated by the host State in accordance with its national legislation before the end of the transition period in accordance with Article 3(2) of that Directive shall retain their right of residence in the host State in accordance with this Part, provided that they continue to reside in the host State thereafter.

3 Paragraph 2 shall also apply to persons falling under points (a) and (b) of Article 3(2) of Directive 2004/38/EC who have applied for facilitation of entry and residence before the end of the transition period, and whose residence is being facilitated by the host State in accordance with its national legislation thereafter.

4 Without prejudice to any right to residence which the persons concerned may have in their own right, the host State shall, in accordance with its national legislation and in accordance with point (b) of Article 3(2) of Directive 2004/38/EC, facilitate entry and residence for the partner with whom the person referred to in points (a) to (d) of paragraph 1 of this Article has a durable relationship, duly attested, where that partner resided outside the host State before the end of the transition period, provided that the relationship was durable before the end of the transition period and continues at the time the partner seeks residence under this Part.

5 In the cases referred to in paragraphs 3 and 4, the host State shall undertake an extensive examination of the personal circumstances of the persons concerned and shall justify any denial of entry or residence to such persons.

Article 11

Continuity of residence

Continuity of residence for the purposes of Articles 9 and 10 shall not be affected by absences as referred to in Article 15(2).

The right of permanent residence acquired under Directive 2004/38/EC before the end of the transition period shall not be treated as lost through absence from the host State for a period specified in Article 15(3).

Article 12

Non-discrimination

Within the scope of this Part, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality within the meaning of the first subparagraph of Article 18 TFEU shall be prohibited in the host State and the State of work in respect of the persons referred to in Article 10 of this Agreement.

TITLE II

RIGHTS AND OBLIGATIONS

Chapter 1

RIGHTS RELATED TO RESIDENCE, RESIDENCE DOCUMENTS

Article 13

Residence rights

1 Union citizens and United Kingdom nationals shall have the right to reside in the host State under the limitations and conditions as set out in Articles 21, 45 or 49 TFEU and in Article 6(1), points (a), (b) or (c) of Article 7(1), Article 7(3), Article 14, Article 16(1) or Article 17(1) of Directive 2004/38/EC.

2 Family members who are either Union citizens or United Kingdom nationals shall have the right to reside in the host State as set out in Article 21 TFEU and in Article 6(1), point (d) of Article 7(1), Article 12(1) or (3), Article 13(1), Article 14, Article 16(1) or Article 17(3) and (4) of Directive 2004/38/EC, subject to the limitations and conditions set out in those provisions.

3 Family members who are neither Union citizens nor United Kingdom nationals shall have the right to reside in the host State under Article 21 TFEU and as set out in Article 6(2), Article 7(2), Article 12(2) or (3), Article 13(2), Article 14, Article 16(2), Article 17(3) or (4) or Article 18 of Directive 2004/38/EC, subject to the limitations and conditions set out in those provisions.

4 The host State may not impose any limitations or conditions for obtaining, retaining or losing residence rights on the persons referred to in paragraphs 1, 2 and 3, other than those provided for in this Title. There shall be no discretion in applying the limitations and conditions provided for in this Title, other than in favour of the person concerned.

Article 14

Right of exit and of entry

1 Union citizens and United Kingdom nationals, their respective family members, and other persons, who reside in the territory of the host State in accordance with the conditions set out in this Title shall have the right to leave the host State and the right to enter it, as set out in Article 4(1) and the first subparagraph of Article 5(1) of Directive 2004/38/EC, with a valid passport or national identity card in the case of Union citizens and United Kingdom nationals, and with a valid passport in the case of their respective family members and other persons who are not Union citizens or United Kingdom nationals.

Five years after the end of the transition period, the host State may decide no longer to accept national identity cards for the purposes of entry to or exit from its territory if such cards do not include a chip that complies with the applicable International Civil Aviation Organisation standards related to biometric identification.

2 No exit visa, entry visa or equivalent formality shall be required of holders of a valid document issued in accordance with Article 18 or 26.

3 Where the host State requires family members who join the Union citizen or United Kingdom national after the end of the transition period to have an entry visa, the host State shall grant such persons every facility to obtain the necessary visas. Such visas shall be issued free of charge as soon as possible, and on the basis of an accelerated procedure.

Article 15

Right of permanent residence

1 Union citizens and United Kingdom nationals, and their respective family members, who have resided legally in the host State in accordance with Union law for a continuous period of 5 years or for the period specified in Article 17 of Directive 2004/38/EC, shall have the right to reside permanently in the host State under the conditions set out in Articles 16, 17 and 18 of Directive 2004/38/EC. Periods of legal residence or work in accordance with Union law before and after the end of the transition period shall be included in the calculation of the qualifying period necessary for acquisition of the right of permanent residence.

2 Continuity of residence for the purposes of acquisition of the right of permanent residence shall be determined in accordance with Article 16(3) and Article 21 of Directive 2004/38/EC.

3 Once acquired, the right of permanent residence shall be lost only through absence from the host State for a period exceeding 5 consecutive years.

Article 16

Accumulation of periods

Union citizens and United Kingdom nationals, and their respective family members, who before the end of the transition period resided legally in the host State in accordance with the conditions of Article 7 of Directive 2004/38/EC for a period of less than 5 years, shall have the right to acquire the right to reside permanently under the conditions set out in Article 15 of this Agreement once they have completed the necessary periods of residence. Periods of legal residence or work in accordance with Union law before and after the end of the transition period shall be included in the calculation of the qualifying period necessary for acquisition of the right of permanent residence.

Article 17

Status and changes

1 The right of Union citizens and United Kingdom nationals, and their respective family members, to rely directly on this Part shall not be affected when they change status, for example between student, worker, self-employed person and economically inactive person. Persons who, at the end of the transition period, enjoy a right of residence in their capacity as family members of Union citizens or United Kingdom nationals, cannot become persons referred to in points (a) to (d) of Article 10(1).

2 The rights provided for in this Title for the family members who are dependants of Union citizens or United Kingdom nationals before the end of the transition period, shall be maintained even after they cease to be dependants.

Article 18

Issuance of residence documents

1 The host State may require Union citizens or United Kingdom nationals, their respective family members and other persons, who reside in its territory in accordance with the conditions set out in this Title, to apply for a new residence status which confers the rights under this Title and a document evidencing such status which may be in a digital form.

Applying for such a residence status shall be subject to the following conditions:

- a the purpose of the application procedure shall be to verify whether the applicant is entitled to the residence rights set out in this Title. Where that is the case, the applicant shall have a right to be granted the residence status and the document evidencing that status;
- b the deadline for submitting the application shall not be less than 6 months from the end of the transition period, for persons residing in the host State before the end of the transition period.

For persons who have the right to commence residence after the end of the transition period in the host State in accordance with this Title, the deadline for submitting the application shall be 3 months after their arrival or the expiry of the deadline referred to in the first subparagraph, whichever is later.

A certificate of application for the residence status shall be issued immediately;

- c the deadline for submitting the application referred to in point (b) shall be extended automatically by 1 year where the Union has notified the United Kingdom, or the United Kingdom has notified the Union, that technical problems prevent the host State either from registering the application or from issuing the certificate of application referred to in point (b). The host State shall publish that notification and shall provide appropriate public information for the persons concerned in good time;
- d where the deadline for submitting the application referred to in point (b) is not respected by the persons concerned, the competent authorities shall assess all the circumstances and reasons for not respecting the deadline and shall allow those persons to submit an application within a reasonable further period of time if there are reasonable grounds for the failure to respect the deadline;
- e the host State shall ensure that any administrative procedures for applications are smooth, transparent and simple, and that any unnecessary administrative burdens are avoided;
- f application forms shall be short, simple, user friendly and adapted to the context of this Agreement; applications made by families at the same time shall be considered together;
- g the document evidencing the status shall be issued free of charge or for a charge not exceeding that imposed on citizens or nationals of the host State for the issuing of similar documents;
- h persons who, before the end of the transition period, hold a valid permanent residence document issued under Article 19 or 20 of Directive 2004/38/EC or hold a valid domestic immigration document conferring a permanent right to reside in the host State, shall have the right to exchange that document within the period referred to in point (b) of this paragraph for a new residence document upon application after a verification

- of their identity, a criminality and security check in accordance with point (p) of this paragraph and confirmation of their ongoing residence; such new residence documents shall be issued free of charge;
- i the identity of the applicants shall be verified through the presentation of a valid passport or national identity card for Union citizens and United Kingdom nationals, and through the presentation of a valid passport for their respective family members and other persons who are not Union citizens or United Kingdom nationals; the acceptance of such identity documents shall not be made conditional upon any criteria other than that of the validity of the document. Where the identity document is retained by the competent authorities of the host State while the application is pending, the host State shall return that document upon application without delay, before the decision on the application has been taken;
 - j supporting documents other than identity documents, such as civil status documents, may be submitted in copy. Originals of supporting documents may be required only in specific cases where there is a reasonable doubt as to the authenticity of the supporting documents submitted;
 - k the host State may only require Union citizens and United Kingdom nationals to present, in addition to the identity documents referred to in point (i) of this paragraph, the following supporting documents as referred to in Article 8(3) of Directive 2004/38/EC:
 - (i) where they reside in the host State in accordance with point (a) of Article 7(1) of Directive 2004/38/EC as workers or self-employed, a confirmation of engagement from the employer or a certificate of employment, or proof that they are self-employed;
 - (ii) where they reside in the host State in accordance with point (b) of Article 7(1) of Directive 2004/38/EC as economically inactive persons, evidence that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host State during their period of residence and that they have comprehensive sickness insurance cover in the host State; or
 - (iii) where they reside in the host State in accordance with point (c) of Article 7(1) of Directive 2004/38/EC as students, proof of enrolment at an establishment accredited or financed by the host State on the basis of its legislation or administrative practice, proof of comprehensive sickness insurance cover, and a declaration or equivalent means of proof, that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host State during their period of residence. The host State may not require such declarations to refer to any specific amount of resources.

With regard to the condition of sufficient resources, Article 8(4) of Directive 2004/38/EC shall apply;

- l the host State may only require family members who fall under point (e)(i) of Article 10(1) or Article 10(2) or (3) of this Agreement and who reside in the host State in accordance with point (d) of Article 7(1) or Article 7(2) of Directive 2004/38/EC to present, in addition to the identity documents referred to in point (i) of this paragraph, the following supporting documents as referred to in Article 8(5) or 10(2) of Directive 2004/38/EC:
 - (i) a document attesting to the existence of a family relationship or registered partnership;

- (ii) the registration certificate or, in the absence of a registration system, any other proof that the Union citizen or the United Kingdom national with whom they reside actually resides in the host State;
- (iii) for direct descendants who are under the age of 21 or who are dependants and dependent direct relatives in the ascending line, and for those of the spouse or registered partner, documentary evidence that the conditions set out in point (c) or (d) of Article 2(2) of Directive 2004/38/EC are fulfilled;
- (iv) for the persons referred to in Article 10(2) or (3) of this Agreement, a document issued by the relevant authority in the host State in accordance with Article 3(2) of Directive 2004/38/EC.

With regard to the condition of sufficient resources as concerns family members who are themselves Union citizens or United Kingdom nationals, Article 8(4) of Directive 2004/38/EC shall apply;

- m the host State may only require family members who fall under point (e)(ii) of Article 10(1) or Article 10(4) of this Agreement to present, in addition to the identity documents referred to in point (i) of this paragraph, the following supporting documents as referred to in Articles 8(5) and 10(2) of Directive 2004/38/EC:
 - (i) a document attesting to the existence of a family relationship or of a registered partnership;
 - (ii) the registration certificate or, in the absence of a registration system, any other proof of residence in the host State of the Union citizen or of the United Kingdom nationals whom they are joining in the host State;
 - (iii) for spouses or registered partners, a document attesting to the existence of a family relationship or a registered partnership before the end of the transition period;
 - (iv) for direct descendants who are under the age of 21 or who are dependants and dependent direct relatives in the ascending line and those of the spouse or registered partner, documentary evidence that they were related to Union citizens or United Kingdom nationals before the end of the transition period and fulfil the conditions set out in point (c) or (d) of Article 2(2) of Directive 2004/38/EC relating to age or dependence;
 - (v) for the persons referred to in Article 10(4) of this Agreement, proof that a durable relationship with Union citizens or United Kingdom nationals existed before the end of the transition period and continues to exist thereafter;
- n for cases other than those set out in points (k), (l) and (m), the host State shall not require applicants to present supporting documents that go beyond what is strictly necessary and proportionate to provide evidence that the conditions relating to the right of residence under this Title have been fulfilled;
- o the competent authorities of the host State shall help the applicants to prove their eligibility and to avoid any errors or omissions in their applications; they shall give the applicants the opportunity to furnish supplementary evidence and to correct any deficiencies, errors or omissions;
- p criminality and security checks may be carried out systematically on applicants, with the exclusive aim of verifying whether the restrictions set out in Article 20 of this Agreement may be applicable. For that purpose, applicants may be required to declare past criminal convictions which appear in their criminal record in accordance with the

law of the State of conviction at the time of the application. The host State may, if it considers this essential, apply the procedure set out in Article 27(3) of Directive 2004/38/EC with respect to enquiries to other States regarding previous criminal records;

- q the new residence document shall include a statement that it has been issued in accordance with this Agreement;
- r the applicant shall have access to judicial and, where appropriate, administrative redress procedures in the host State against any decision refusing to grant the residence status. The redress procedures shall allow for an examination of the legality of the decision, as well as of the facts and circumstances on which the proposed decision is based. Such redress procedures shall ensure that the decision is not disproportionate.

2 During the period referred to in point (b) of paragraph 1 of this Article and its possible one#year extension under point (c) of that paragraph, all rights provided for in this Part shall be deemed to apply to Union citizens or United Kingdom nationals, their respective family members, and other persons residing in the host State, in accordance with the conditions and subject to the restrictions set out in Article 20.

3 Pending a final decision by the competent authorities on any application referred to in paragraph 1, and pending a final judgment handed down in case of judicial redress sought against any rejection of such application by the competent administrative authorities, all rights provided for in this Part shall be deemed to apply to the applicant, including Article 21 on safeguards and right of appeal, subject to the conditions set out in Article 20(4).

4 Where a host State has chosen not to require Union citizens or United Kingdom nationals, their family members, and other persons, residing in its territory in accordance with the conditions set out in this Title, to apply for the new residence status referred to in paragraph 1 as a condition for legal residence, those eligible for residence rights under this Title shall have the right to receive, in accordance with the conditions set out in Directive 2004/38/EC, a residence document, which may be in a digital form, that includes a statement that it has been issued in accordance with this Agreement.

Article 19

Issuance of residence documents during the transition period

1 During the transition period, a host State may allow applications for a residence status or residence document as referred to in Article 18(1) and (4) to be made voluntarily from the date of entry into force of this Agreement.

2 Decisions to accept or refuse such applications shall be taken in accordance with Article 18(1) and (4). Decisions under Article 18(1) shall have no effect until after the end of the transition period.

3 If an application under Article 18(1) is accepted before the end of the transition period, the host State may not withdraw the decision granting the residence status before the end of the transition period on any grounds other than those set out in Chapter VI and Article 35 of Directive 2004/38/EC.

4 If an application is refused before the end of the transition period, the applicant may apply again at any time before the expiry of the period set out in point (b) of Article 18(1).

5 Without prejudice to paragraph 4, the redress procedures under point (r) of Article 18(1) shall be available from the date of any decision to refuse an application referred to in paragraph 2 of this Article.

Article 20

Restrictions of the rights of residence and entry

1 The conduct of Union citizens or United Kingdom nationals, their family members, and other persons, who exercise rights under this Title, where that conduct occurred before the end of the transition period, shall be considered in accordance with Chapter VI of Directive 2004/38/EC.

2 The conduct of Union citizens or United Kingdom nationals, their family members, and other persons, who exercise rights under this Title, where that conduct occurred after the end of the transition period, may constitute grounds for restricting the right of residence by the host State or the right of entry in the State of work in accordance with national legislation.

3 The host State or the State of work may adopt the necessary measures to refuse, terminate or withdraw any right conferred by this Title in the case of the abuse of those rights or fraud, as set out in Article 35 of Directive 2004/38/EC. Such measures shall be subject to the procedural safeguards provided for in Article 21 of this Agreement.

4 The host State or the State of work may remove applicants who submitted fraudulent or abusive applications from its territory under the conditions set out in Directive 2004/38/EC, in particular Articles 31 and 35 thereof, even before a final judgment has been handed down in the case of judicial redress sought against any rejection of such an application.

Article 21

Safeguards and right of appeal

The safeguards set out in Article 15 and Chapter VI of Directive 2004/38/EC shall apply in respect of any decision by the host State that restricts residence rights of the persons referred to in Article 10 of this Agreement.

Article 22

Related rights

In accordance with Article 23 of Directive 2004/38/EC, irrespective of nationality, the family members of a Union citizen or United Kingdom national who have the right of residence or the right of permanent residence in the host State or the State of work shall be entitled to take up employment or self-employment there.

Article 23

Equal treatment

1 In accordance with Article 24 of Directive 2004/38/EC, subject to the specific provisions provided for in this Title and Titles I and IV of this Part, all Union citizens or United Kingdom nationals residing on the basis of this Agreement in the territory of the host State shall

enjoy equal treatment with the nationals of that State within the scope of this Part. The benefit of this right shall be extended to those family members of Union citizens or United Kingdom nationals who have the right of residence or permanent residence.

2 By way of derogation from paragraph 1, the host State shall not be obliged to confer entitlement to social assistance during periods of residence on the basis of Article 6 or point (b) of Article 14(4) of Directive 2004/38/EC, nor shall it be obliged, prior to a person's acquisition of the right of permanent residence in accordance with Article 15 of this Agreement, to grant maintenance aid for studies, including vocational training, consisting in student grants or student loans to persons other than workers, self-employed persons, persons who retain such status or to members of their families.

Chapter 2

RIGHTS OF WORKERS AND SELF-EMPLOYED PERSONS

Article 24

Rights of workers

1 Subject to the limitations set out in Article 45(3) and (4) TFEU, workers in the host State and frontier workers in the State or States of work shall enjoy the rights guaranteed by Article 45 TFEU and the rights granted by Regulation (EU) No 492/2011 of the European Parliament and of the Council⁽⁴⁾. These rights include:

- a the right not to be discriminated against on grounds of nationality as regards employment, remuneration and other conditions of work and employment;
- b the right to take up and pursue an activity in accordance with the rules applicable to the nationals of the host State or the State of work;
- c the right to assistance afforded by the employment offices of the host State or the State of work as offered to own nationals;
- d the right to equal treatment in respect of conditions of employment and work, in particular as regards remuneration, dismissal and in case of unemployment, reinstatement or re#employment;
- e the right to social and tax advantages;
- f collective rights;
- g the rights and benefits accorded to national workers in matters of housing;
- h the right for their children to be admitted to the general educational, apprenticeship and vocational training courses under the same conditions as the nationals of the host State or the State of work, if such children are residing in the territory where the worker works.

2 Where a direct descendant of a worker who has ceased to reside in the host State is in education in that State, the primary carer for that descendant shall have the right to reside in that State until the descendant reaches the age of majority, and after the age of majority if that descendant continues to need the presence and care of the primary carer in order to pursue and complete his or her education.

3 Employed frontier workers shall enjoy the right to enter and exit the State of work in accordance with Article 14 of this Agreement and shall retain the rights they enjoyed as workers there, provided they are in one of the circumstances set out in points (a), (b), (c) and (d) of Article 7(3) of Directive 2004/38/EC, even where they do not move their residence to the State of work.

Article 25

Rights of self-employed persons

1 Subject to the limitations set out in Articles 51 and 52 TFEU, self-employed persons in the host State and self-employed frontier workers in the State or States of work shall enjoy the rights guaranteed by Articles 49 and 55 TFEU. These rights include:

- a the right to take up and pursue activities as self-employed persons and to set up and manage undertakings under the conditions laid down by the host State for its own nationals, as set out in Article 49 TFEU;
- b the rights as set out in points (c) to (h) of Article 24(1) of this Agreement.

2 Article 24(2) shall apply to direct descendants of self-employed workers.

3 Article 24(3) shall apply to self-employed frontier workers.

Article 26

Issuance of a document identifying frontier workers' rights

The State of work may require Union citizens and United Kingdom nationals who have rights as frontier workers under this Title to apply for a document certifying that they have such rights under this Title. Such Union citizens and United Kingdom nationals shall have the right to be issued with such a document.

Chapter 3

PROFESSIONAL QUALIFICATIONS

Article 27

Recognised professional qualifications

1 The recognition, before the end of the transition period, of professional qualifications, as defined in point (b) of Article 3(1) of Directive 2005/36/EC of the European Parliament and of the Council⁽⁵⁾, of Union citizens or United Kingdom nationals, and their family members, by their host State or their State of work shall maintain its effects in the respective State, including the right to pursue their profession under the same conditions as its nationals, where such recognition was made in accordance with any of the following provisions:

- a Title III of Directive 2005/36/EC in respect of the recognition of professional qualifications in the context of the exercise of the freedom of establishment, whether such recognition fell under the general system for the recognition of evidence of training, the system for the recognition of professional experience or the system for the recognition on the basis of coordination of minimum training conditions;
- b Article 10(1) and (3) of Directive 98/5/EC of the European Parliament and of the Council⁽⁶⁾ in respect of gaining admission to the profession of lawyer in the host State or State of work;
- c Article 14 of Directive 2006/43/EC of the European Parliament and of the Council⁽⁷⁾ in respect of the approval of statutory auditors from another Member State;

- d Council Directive 74/556/EEC⁽⁸⁾ in respect of the acceptance of evidence of the knowledge and ability necessary to take up or pursue the activities of self-employed persons and of intermediaries engaging in the trade and distribution of toxic products or activities involving the professional use of toxic products.
- 2 Recognitions of professional qualifications for the purposes of point (a) of paragraph 1 of this Article shall include:
- a recognitions of professional qualifications which have benefited from Article 3(3) of Directive 2005/36/EC;
 - b decisions granting partial access to a professional activity in accordance with Article 4f of Directive 2005/36/EC;
 - c recognitions of professional qualifications for establishment purposes made under Article 4d of Directive 2005/36/EC.

Article 28

Ongoing procedures on the recognition of professional qualifications

Article 4, Article 4d in respect of recognitions of professional qualifications for establishment purposes, Article 4f and Title III of Directive 2005/36/EC, Article 10(1), (3) and (4) of Directive 98/5/EC, Article 14 of Directive 2006/43/EC and Directive 74/556/EEC shall apply in respect of the examination by a competent authority of the host State or State of work of any application for the recognition of professional qualifications introduced before the end of the transition period by Union citizens or United Kingdom nationals and in respect of the decision on any such application.

Articles 4a, 4b and 4e of Directive 2005/36/EC shall also apply to the extent relevant for the completion of the procedures for the recognitions of professional qualifications for establishment purposes under Article 4d of that Directive.

Article 29

Administrative cooperation on recognition of professional qualifications

1 With regard to the pending applications referred to in Article 28, the United Kingdom and the Member States shall cooperate in order to facilitate the application of Article 28. Cooperation may include the exchange of information, including information on disciplinary action or criminal sanctions taken or any other serious and specific circumstances which are likely to have consequences for the pursuit of the activities falling under the Directives referred to in Article 28.

2 By way of derogation from Article 8, for a period not exceeding 9 months from the end of the transition period, the United Kingdom shall be entitled to use the internal market information system in respect of applications referred to in Article 28 insofar as they concern procedures for the recognition of professional qualifications for establishment purposes under Article 4d of Directive 2005/36/EC.

TITLE III

COORDINATION OF SOCIAL SECURITY SYSTEMS

Article 30

Persons covered

- 1 This Title shall apply to the following persons:
 - a Union citizens who are subject to the legislation of the United Kingdom at the end of the transition period, as well as their family members and survivors;
 - b United Kingdom nationals who are subject to the legislation of a Member State at the end of the transition period, as well as their family members and survivors;
 - c Union citizens who reside in the United Kingdom and are subject to the legislation of a Member State at the end of the transition period, as well as their family members and survivors;
 - d United Kingdom nationals who reside in a Member State, and are subject to the legislation of the United Kingdom at the end of the transition period, as well as their family members and survivors;
 - e persons who do not fall within points (a) to (d) but are:
 - (i) Union citizens who pursue an activity as an employed or self-employed person in the United Kingdom at the end of the transition period, and who, based on Title II of Regulation (EC) No 883/2004 of the European Parliament and of the Council⁽⁹⁾, are subject to the legislation of a Member State, as well as their family members and survivors; or
 - (ii) United Kingdom nationals who pursue an activity as an employed or self-employed person in one or more Member States at the end of the transition period, and who, based on Title II of Regulation (EC) No 883/2004, are subject to the legislation of the United Kingdom, as well as their family members and survivors;
 - f stateless persons and refugees, residing in a Member State or in the United Kingdom, who are in one of the situations described in points (a) to (e), as well as their family members and survivors;
 - g nationals of third countries, as well as members of their families and survivors, who are in one of the situations described in points (a) to (e), provided that they fulfil the conditions of Council Regulation (EC) No 859/2003⁽¹⁰⁾.
- 2 The persons referred to in paragraph 1 shall be covered for as long as they continue without interruption to be in one of the situations set out in that paragraph involving both a Member State and the United Kingdom at the same time.
- 3 This Title shall also apply to persons who do not, or who no longer, fall within points (a) to (e) of paragraph 1 of this Article but who fall within Article 10 of this Agreement, as well as their family members and survivors.
- 4 The persons referred to in paragraph 3 shall be covered for as long as they continue to have a right to reside in the host State under Article 13 of this Agreement, or a right to work in their State of work under Article 24 or 25 of this Agreement.

5 Where this Article refers to family members and survivors, those persons shall be covered by this Title only to the extent that they derive rights and obligations in that capacity under Regulation (EC) No 883/2004.

Article 31

Social security coordination rules

1 The rules and objectives set out in Article 48 TFEU, Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 of the European Parliament and of the Council⁽¹¹⁾ shall apply to the persons covered by this Title.

The Union and the United Kingdom shall take due account of the Decisions and Recommendations of the Administrative Commission for the Coordination of Social Security Systems attached to the European Commission, set up under Regulation (EC) No 883/2004 ("Administrative Commission") listed in Part I of Annex I to this Agreement.

2 By way of derogation from Article 9 of this Agreement, for the purposes of this Title, the definitions in Article 1 of Regulation (EC) No 883/2004 shall apply.

3 With regard to nationals of third countries who fulfil the conditions of Regulation (EC) No 859/2003, as well as their family members or survivors within the scope of this Title, the references to Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 in this Title shall be understood as references to Council Regulation (EEC) No 1408/71⁽¹²⁾ and Council Regulation (EEC) No 574/72⁽¹³⁾ respectively. References to specific provisions of Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 shall be understood as references to the corresponding provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72.

Article 32

Special situations covered

1 The following rules shall apply in the following situations to the extent set out in this Article, insofar as they relate to persons not or no longer covered by Article 30:

- a the following persons shall be covered by this Title for the purposes of reliance on and aggregation of periods of insurance, employment, self-employment or residence, including rights and obligations deriving from such periods in accordance with Regulation (EC) No 883/2004:
 - (i) Union citizens, as well as stateless persons and refugees residing in a Member State and nationals of third countries who fulfil the conditions of Regulation (EC) No 859/2003, who have been subject to the legislation of the United Kingdom before the end of the transition period, as well as their family members and survivors;
 - (ii) United Kingdom nationals, as well as stateless persons and refugees residing in the United Kingdom and nationals of third countries who fulfil the conditions of Regulation (EC) No 859/2003, who have been subject to the legislation of a Member State before the end of the transition period, as well as their family members and survivors;

- for the purposes of the aggregation of periods, periods completed both before and after the end of the transition period shall be taken into account in accordance with Regulation (EC) No 883/2004;
- b the rules set out in Articles 20 and 27 of Regulation (EC) No 883/2004 shall continue to apply to persons who, before the end of the transition period, had requested authorisation to receive a course of planned health care treatment pursuant to Regulation (EC) No 883/2004, until the end of the treatment. The corresponding reimbursement procedures shall also apply even after the treatment ends. Such persons and the accompanying persons shall enjoy the right to enter and exit the State of treatment in accordance with Article 14, *mutatis mutandis*;
 - c the rules set out in Articles 19 and 27 of Regulation (EC) No 883/2004 shall continue to apply to persons who are covered by Regulation (EC) No 883/2004 and who are on a stay at the end of the transition period in a Member State or the United Kingdom, until the end of their stay. The corresponding reimbursement procedures shall also apply even after the stay or treatment ends;
 - d the rules set out in Articles 67, 68 and 69 of Regulation (EC) No 883/2004 shall continue to apply, for as long as the conditions are fulfilled, to awards of family benefits to which there is entitlement at the end of the transition period for the following persons:
 - (i) Union citizens, stateless persons and refugees residing in a Member State as well as nationals of third countries who fulfil the conditions of Regulation (EC) No 859/2003 and reside in a Member State, who are subject to the legislation of a Member State and have family members residing in the United Kingdom at the end of the transition period;
 - (ii) United Kingdom nationals, as well as stateless persons and refugees residing in the United Kingdom and nationals of third countries who fulfil the conditions of Regulation (EC) No 859/2003 and reside in the United Kingdom, who are subject to the legislation of the United Kingdom and have family members residing in a Member State at the end of the transition period;
 - e in the situations set out in point (d)(i) and (ii) of this paragraph, for any persons who have rights as family members at the end of the transition period under Regulation (EC) No 883/2004, such as derived rights for sickness benefits in kind, that Regulation and the corresponding provisions of Regulation (EC) No 987/2009 shall continue to apply for as long as the conditions provided therein are fulfilled.

2 The provisions of Chapter 1 of Title III of Regulation (EC) No 883/2004 as regards sickness benefits shall apply to persons receiving benefits under point (a) of paragraph 1 of this Article.

This paragraph shall apply *mutatis mutandis* as regards family benefits based on Articles 67, 68 and 69 of Regulation (EC) No 883/2004.

Article 33

Nationals of Iceland, Liechtenstein, Norway and Switzerland

1 The provisions of this Title applicable to Union citizens shall apply to nationals of Iceland, the Principality of Liechtenstein, the Kingdom of Norway, and the Swiss Confederation provided that:

- a Iceland, the Principality of Liechtenstein, the Kingdom of Norway, and the Swiss Confederation, as applicable, have concluded and apply corresponding agreements with the United Kingdom which apply to Union citizens; and
- b Iceland, the Principality of Liechtenstein, the Kingdom of Norway, and the Swiss Confederation, as applicable, have concluded and apply corresponding agreements with the Union which apply to United Kingdom nationals.

2 Upon notification from the United Kingdom and from the Union of the date of entry into force of the agreements referred to in paragraph 1 of this Article, the Joint Committee established by Article 164 ("Joint Committee") shall set the date from which the provisions of this Title shall apply to the nationals of Iceland, the Principality of Liechtenstein, the Kingdom of Norway, and the Swiss Confederation, as applicable.

Article 34

Administrative cooperation

1 By way of derogation from Articles 7 and 128(1), as of the date of entry into force of this Agreement, the United Kingdom shall have the status of observer in the Administrative Commission. It may, where the items on the agenda relating to this Title concern the United Kingdom, send a representative, to be present in an advisory capacity, to the meetings of the Administrative Commission and to the meetings of the bodies referred to in Articles 73 and 74 of Regulation (EC) No 883/2004 where such items are discussed.

2 By way of derogation from Article 8, the United Kingdom shall take part in the Electronic Exchange of Social Security Information (EESSI) and bear the related costs.

Article 35

Reimbursement, recovery and offsetting

The provisions of Regulations (EC) No 883/2004 and (EC) No 987/2009 on reimbursement, recovery and offsetting shall continue to apply in relation to events, insofar as they relate to persons not covered by Article 30, that:

- (a) occurred before the end of the transition period; or
- (b) occur after the end of the transition period and relate to persons who were covered by Articles 30 or 32 when the event occurred.

Article 36

Development of law and adaptations of Union acts

1 Where Regulations (EC) No 883/2004 and (EC) No 987/2009 are amended or replaced after the end of the transition period, references to those Regulations in this Agreement shall be understood as referring to those Regulations as amended or replaced, in accordance with the acts listed in Part II of Annex I to this Agreement.

The Joint Committee shall revise Part II of Annex I to this Agreement and align it to any act amending or replacing Regulations (EC) No 883/2004 and (EC) No 987/2009 as soon as such act is adopted by the Union. To that end, the Union shall, as soon as

possible after adoption, inform the United Kingdom within the Joint Committee of any act amending or replacing those Regulations.

2 By way of derogation from the second subparagraph of paragraph 1, the Joint Committee shall assess the effects of an act amending or replacing Regulations (EC) No 883/2004 and (EC) No 987/2009 where that act:

- a amends or replaces the matters covered by Article 3 of Regulation (EC) No 883/2004; or
- b makes a cash benefit exportable where that cash benefit was non-exportable under Regulation (EC) No 883/2004 at the end of the transition period, or makes a cash benefit non-exportable, where that cash benefit was exportable at the end of the transition period; or
- c makes a cash benefit exportable for an unlimited period of time, where that cash benefit was exportable only for a limited period of time under Regulation (EC) No 883/2004 at the end of the transition period, or makes a cash benefit exportable only for a limited period of time, where that cash benefit was exportable for an unlimited period of time under that Regulation at the end of the transition period.

In making its assessment, the Joint Committee shall consider in good faith the scale of the changes referred to in the first subparagraph of this paragraph, as well as the importance of the continued good functioning of Regulations (EC) No 883/2004 and (EC) No 987/2009 between the Union and the United Kingdom and the importance of there being a competent State in relation to individuals within the scope of Regulation (EC) No 883/2004.

If the Joint Committee so decides within 6 months from receiving the information given by the Union pursuant to paragraph 1, Part II of Annex I to this Agreement shall not be aligned to the act referred to in the first subparagraph of this paragraph.

For the purposes of this paragraph:

- a "exportable" means payable under Regulation (EC) No 883/2004 to or in relation to a person residing in a Member State or in the United Kingdom if the institution responsible for providing the benefit is not situated there; "non-exportable" shall be interpreted accordingly; and
- b "exportable for an unlimited period of time" means exportable for as long as the conditions giving rise to the entitlements are met.

3 Regulations (EC) No 883/2004 and (EC) No 987/2009 shall, for the purposes of this Agreement, be understood as comprising the adaptations listed in Part III of Annex I to this Agreement. As soon as possible after the adoption of any changes in domestic provisions of relevance to Part III of Annex I to this Agreement, the United Kingdom shall inform the Union thereof within the Joint Committee.

4 The Decisions and Recommendations of the Administrative Commission shall, for the purposes of this Agreement, be understood as comprising the decisions and recommendations listed in Part I of Annex I. The Joint Committee shall amend Part I of Annex I to reflect any new Decision or Recommendation adopted by the Administrative Commission. To that end, as soon as possible after adoption of decisions and recommendations of the Administrative Commission, the Union shall inform the United Kingdom thereof within the Joint Committee. Such amendments shall be made by the Joint Committee on a proposal of the Union or the United Kingdom.

TITLE IV

OTHER PROVISIONS

Article 37

Publicity

The Member States and the United Kingdom shall disseminate information concerning the rights and obligations of persons covered by this Part, in particular by means of awareness-raising campaigns conducted, as appropriate, through national and local media and other means of communication.

Article 38

More favourable provisions

1 This Part shall not affect any laws, regulations or administrative provisions applicable in a host State or a State of work which would be more favourable to the persons concerned. This paragraph shall not apply to Title III.

2 Article 12 and Article 23(1) shall be without prejudice to the Common Travel Area arrangements between the United Kingdom and Ireland as regards more favourable treatment which may result from these arrangements for the persons concerned.

Article 39

Life-long protection

The persons covered by this Part shall enjoy the rights provided for in the relevant Titles of this Part for their lifetime, unless they cease to meet the conditions set out in those Titles.

- (1) Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ L 158, 30.4.2004, p. 77).
- (2) Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ L 338, 23.12.2003 p. 1).
- (3) The notion of rights of custody is to be interpreted in accordance with point (9) of Article 2 of Regulation (EC) No 2201/2003. Therefore, it covers rights of custody acquired by judgment, by operation of law or by an agreement having legal effect.
- (4) Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union (OJ L 141, 27.5.2011, p. 1).
- (5) Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ L 255, 30.9.2005, p. 22).
- (6) Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained (OJ L 77, 14.3.1998, p. 36).
- (7) Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (OJ L 157, 9.6.2006, p. 87).
- (8) Council Directive 74/556/EEC of 4 June 1974 laying down detailed provisions concerning transitional measures relating to activities, trade in and distribution of toxic products and activities entailing the professional use of such products including activities of intermediaries (OJ L 307, 18.11.1974, p. 1).
- (9) Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1).
- (10) Council Regulation (EC) No 859/2003 of 14 May 2003 extending the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality (OJ L 124, 20.5.2003, p. 1).
- (11) Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (OJ L 284, 30.10.2009, p. 1).
- (12) Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (OJ L 149, 5.7.1971, p. 2).
- (13) Regulation (EEC) No 574/72 of the Council of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community (OJ L 74, 27.3.1972, p. 1).