

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.

- (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.