

The attached draft text was shared by the UK negotiating team with the Task Force for Relations with the United Kingdom as a draft negotiating document, that is, to be shared among negotiating teams only, in line with the provisions of the Terms of Reference.

The text is now being made public.

DRAFT UK NEGOTIATING DOCUMENT

Title: DRAFT WORKING TEXT FOR AN AGREEMENT BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE EUROPEAN UNION ON THE TRANSFER OF UNACCOMPANIED ASYLUM-SEEKING CHILDREN

Disclaimer:

The UK proposes the following legal text to form the basis for discussions with the EU on an agreement on the transfer of unaccompanied asylum seeking children. In putting forward this proposal, the UK reserves the right to amend, supplement or withdraw proposals in the light of negotiations and the proposals put forward by the European Union.

The general and final provisions in this text, including appropriate exemptions may require further adjustment or amendment in light of the negotiations. The UK proposal has taken account of relevant international precedents.

The UK recalls that it acts in these negotiations on behalf of all the territories for whose international relations it is responsible and in negotiating this draft agreement the UK Government will seek outcomes which support the territories' security and economic interests, reflecting their unique characteristics. The UK reserves its position on the application of these principles to the draft text.

This draft text is being shared by the UK negotiating team with the Task Force for Relations with the United Kingdom as a draft negotiating document. As agreed in the Terms of Reference, the receiving party should not share this material outside of negotiating teams without the consent of the sending party.

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AGREEMENT between the United Kingdom of Great Britain and Northern Ireland and the European Union on the transfer of unaccompanied asylum-seeking children

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND (“THE UNITED KINGDOM”) AND THE EUROPEAN UNION (“THE UNION”) (hereinafter referred to as “the Parties” and each a “Party”);

DETERMINED to maintain and strengthen their co-operation in order to combat illegal migration more effectively,

DESIRING to establish, by means of this agreement and of the basis of reciprocity, effective and swift procedures for re-uniting unaccompanied asylum-seeking children in one of the Member States of the Union with family in the United Kingdom, and such children in the United Kingdom with family in one of the Member States,

REAFFIRMING the respect of the Parties for human rights and fundamental freedoms, for example as laid down in the Universal Declaration of Human Rights proclaimed in Paris on 10 December 1948 and for the principles of democracy and the rule of law,

EMPHASISING that this Agreement is without prejudice to the rights, obligations and responsibilities of the Union, its Member States and the United Kingdom arising from international law and, in particular, from the Convention of 28 July 1951 on the Status of Refugees,

EMPHASISING that this Agreement is based on the principles of joint responsibility, solidarity, and an equal partnership to manage the migratory flows between the United Kingdom and the Union,

HAVE AGREED AS FOLLOWS:

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SECTION I

ARTICLE 1

Definitions

For the purpose of this Agreement:

“adult” means a person who is aged 18 years or over;

“application for international protection” means an application for asylum or refugee status, or for subsidiary or humanitarian protection;

“British Citizen” means a British Citizen or another United Kingdom national with a right of abode in the United Kingdom as determined by the law of the United Kingdom;

“child” means a third-country national or a stateless person below the age of 18 years;

“competent authority” means a national authority of one of the Member States or the United Kingdom entrusted with the implementation of this Agreement as designated by the United Kingdom and the Member States and notified to the Joint Committee;

“family member” means, in so far as the family already existed in the country of origin, the following members of an unaccompanied child’s family;

— a spouse or civil partner of the child or any person with whom the child has a genuine and subsisting relationship that is similar to marriage or civil partnership;

— when the child is unmarried, the father, mother or another adult responsible for the applicant, whether by law or by the practice of the State (the United Kingdom or one of the Member States) where the adult is present;

“legally present” includes being present in the United Kingdom or one of the Member States for the purpose of making an application for international protection;

“Member State” means any Member State of the Union;

“national of a Member State” means any person who holds the nationality of a Member State of the Union;

“personal data” means any information relating to an identified or identifiable natural person, an identifiable person being a person who can be identified, directly or indirectly, in particular, but not limited to, an identifier such as a name, an identification number, location data or an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that person;

“processing of personal data” means any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, recording,

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organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction;

“relative” means the child’s adult uncle or aunt or grandparent regardless of whether the child was born in or out of wedlock or adopted as defined in national law;

“third-country national” means any person who is neither a national of a Member State nor a British Citizen;

“unaccompanied child” means a child who is present in the territory of the United Kingdom or of a Member State and who is not in the care of an adult responsible for him or her and for as long as he or she is not taken into the care of such an adult.

ARTICLE 2

Scope

This Agreement makes provision for unaccompanied children who have made an application for international protection in the United Kingdom or in a Member State.

SECTION II

GENERAL PRINCIPLES

ARTICLE 3

Guarantees for children

The best interests of the child shall be a primary consideration with respect to all procedures provided for in or under this Agreement.

SECTION III

TRANSFERS OF UNACCOMPANIED CHILDREN TO THE UNITED KINGDOM

ARTICLE 4

Requests for transfer to the United Kingdom

1. A Member State may request the transfer to the United Kingdom of an unaccompanied child who has made an application for international protection if one of the conditions in paragraphs 2 or 3 apply, provided it is in the best interests of the child.

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2. The first condition is that the child has a family member or a sibling legally present in the United Kingdom.
3. The second condition is that the child has a relative who is legally present in the United Kingdom and who, based on an individual examination carried out by a competent body authorised by the United Kingdom, can take care of the child.
4. Where a child has family members, siblings or relatives present in both the United Kingdom and another Member State, the United Kingdom and the Member States shall cooperate to determine with which person the child should be reunited.

ARTICLE 5

Determination of application for international protection

Where an unaccompanied child is transferred to the United Kingdom as a consequence of a request under Article 4, the United Kingdom shall be responsible for determining that child's application for international protection.

SECTION IV

TRANSFERS OF UNACCOMPANIED CHILDREN TO A MEMBER STATE

ARTICLE 6

Requests for transfer to a Member State

1. The United Kingdom may request the transfer to a Member State of an unaccompanied child who has made an application for international protection if one of the conditions in paragraphs 2 or 3 apply, provided it is in the best interests of the child.
2. The first condition is that the child has a family member or a sibling legally present in that Member State.
3. The second condition is that the child has a relative who is legally present in that Member State and who, based on an individual examination carried out by a competent body authorised by that Member State, can take care of the child.
4. Where a child has family members, siblings or relatives present in more than one Member State, the United Kingdom and the Member States shall cooperate to determine with which person the child should be reunited.

ARTICLE 7

Determination of application for international protection

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Where an unaccompanied child is transferred to a Member State as a consequence of a request under Article 6, that Member State shall be responsible for determining that child's application for international protection.

SECTION V

IMPLEMENTING PROVISIONS

ARTICLE 8

Administrative arrangements

The Parties shall establish through the Joint Committee the administrative arrangements necessary for the application of this Agreement and shall comply with those arrangements.

SECTION VI

FINAL PROVISIONS

ARTICLE 9

Territorial application

[...]

ARTICLE 10

Data protection

The communication of personal data shall only take place if such communication is necessary for the implementation of this Agreement by the competent authorities of a Member State or the United Kingdom, as the case may be. The processing of personal data by a competent authority of the United Kingdom shall be subject to the domestic laws of the United Kingdom. Processing of personal data by a competent authority of a Member State shall be subject to applicable Union law and to the national legislation of that Member State.

ARTICLE 11

Establishment and role of the Joint Committee

1. A Joint Committee composed of representatives of the Parties shall be established. The Joint Committee shall be co-chaired by a representative of the Government of the United Kingdom and by a Member of the European Commission or their respective designees.

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2. The Joint Committee shall be responsible for the implementation and application of the Agreement. It shall take decisions in the circumstances provided for in the Agreement and may issue recommendations. The Joint Committee shall reach its decisions by mutual agreement and they shall be binding on the Parties.
3. The Joint Committee shall meet as and when necessary and at least once a year. Either Party may request the convening of a meeting.
4. The work of the Joint Committee shall be governed by the rules of procedure set out in the Annex.

ARTICLE 12

No direct effect on persons

1. Nothing in this Agreement shall be construed as conferring rights or imposing obligations on persons nor as permitting this Agreement to be directly invoked in the domestic legal systems of the Parties.
2. A Party shall not provide for a right of action under its national law against the other Party on the ground that a measure of the other Party is inconsistent with this Agreement.

ARTICLE 13

Interpretation

This Agreement shall be interpreted in accordance with the customary rules of public international law, including those in the Vienna Convention on the Law of Treaties.

ARTICLE 14

Amendment

1. This Agreement may be amended by agreement between the Parties
2. Such amendments shall enter into force on the first day of the second month, or on such later date as may be agreed by the Parties, following the date on which the Parties notify each other that their respective applicable legal requirements and procedures for entry into force of such amendments have been completed. The Parties shall make such notification through an exchange of written notifications.

ARTICLE 15

Dispute resolution

1. The Parties may refer to the Joint Committee any dispute relating to the application or interpretation of this Agreement.

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2. The Joint Committee may settle the dispute by means of a decision.
3. Each Party shall be bound to take the measures involved in carrying out the decision referred to in paragraph 2.

ARTICLE 16

Entry into force

1. The Parties shall approve this Agreement in accordance with their respective internal requirements and procedures.
2. This Agreement shall enter into force on one of the following dates, whichever is the latest:
 - (a) 1 January 2021 in the event that the Parties have, prior to that date, exchanged written notifications certifying that they have completed their respective internal requirements and procedures;
 - (b) the first day of the month following the date the Parties exchange the written notifications referred to in sub-paragraph (a).

ARTICLE 17

Termination

1. This Agreement shall remain in force unless terminated pursuant to paragraph 2.
2. Either Party may notify, in writing, to the other Party of its intention to terminate this Agreement. The termination shall take effect six months after the date of receipt of the notification, by the other Party unless the United Kingdom and the Union otherwise agree.

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ANNEX

Rules of Procedure of the Joint Committee

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