



Treaty Series No.11 (2021)

Draft Agreement

between the European Union, the European Atomic Energy Community and the United Kingdom of Great Britain and Northern Ireland on the Establishment and the Privileges and Immunities of the Delegation of the European Union to the United Kingdom

[The Agreement is not in force]

*Presented to Parliament
by the Secretary of State for Foreign, Commonwealth and Development Affairs
by Command of Her Majesty
May 2021*

CORRECTION SLIP

Title: Draft Agreement between the European Union, the European Atomic Energy Community and the United Kingdom of Great Britain and Northern Ireland on the Establishment and the Privileges and Immunities of the Delegation of the European Union to the United Kingdom

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Correction: An examination of the Command Paper has revealed typographical errors on page 3, in the preamble; on page 10, Article 18(3); on page 14, Article 26; and on page 15, Article 27(2). Additionally there are omitted references to the European Atomic Energy Community in various parts of the text.

Page 3 First paragraph of the preamble currently reads: The European Union and the United Kingdom of Great Britain and Northern Ireland (hereafter: “United Kingdom”),

Page 3 First paragraph of the preamble should read: The European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland (“United Kingdom”), of the other part,

Page 10 Article 18(3) currently reads: The privileges and immunities referred to in paragraphs 1(c) and (e) of this Article shall not apply to any Staff Member or Family Member if they are a British National or a

Permanent Resident of the United Kingdom. This is incorrect. 1st line “and (e)” should be deleted and “paragraphs” changed to “paragraph”.

Page 14 Article 26 1st line after “the European Union” insert “or the European Atomic Energy Community”

Page 15 Article 27(1) 2nd line after “the European Union insert “, the European Atomic Energy Community”

Page 15 Article 27(2) currently reads: Each of the European Union and the United Kingdom may terminate this Agreement by notifying the other party in writing. This Agreement shall cease to apply one year after the date of such notification, or on any other date as agreed between the the European Union and the United Kingdom.

Page 15 Article 27(2) should read: Each of the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom, of the other part, may terminate this Agreement by notifying the other party in writing. This Agreement shall cease to apply one year after the date of such notification, or on any other date as agreed between the European Union and the European Atomic Energy Community, and the United Kingdom.

Date of correction: 28 June 2021



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**DRAFT AGREEMENT BETWEEN THE EUROPEAN UNION, THE
EUROPEAN ATOMIC ENERGY COMMUNITY AND THE UNITED
KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND ON THE
ESTABLISHMENT AND THE PRIVILEGES AND IMMUNITIES OF THE
DELEGATION OF THE EUROPEAN UNION TO THE UNITED KINGDOM**

The European Union and the United Kingdom of Great Britain and Northern Ireland (hereafter: “United Kingdom”),

Desirous to establish friendly relations and cooperation between the European Union, the European Atomic Energy Community and the United Kingdom following the United Kingdom’s withdrawal from the European Union and the European Atomic Energy Community,

Wishing to lay down terms concerning the establishment on the territory of the United Kingdom of a delegation of the European Union and concerning the privileges and immunities of the delegation and its staff members, have agreed as follows:

Article 1

Definitions

1. For the purposes of this Agreement:
 - a) “Agreement” means this agreement;
 - b) “Archives” means official correspondence, documents, manuscripts, photographs, films, recordings, computer and media data, and any other similar material belonging to or held by the Delegation, and all other information contained therein on the territory of the United Kingdom;
 - c) “Delegation” means the delegation of the European Union to the United Kingdom;
 - d) “Diplomatic Agents” means the Head of Delegation and those Staff Members who have been notified to the United Kingdom as carrying out diplomatic functions;
 - e) “Family Members” means the following persons who form part of a Staff Member’s household in the United Kingdom and have been notified in accordance with Article 24 of this Agreement:
 - i. a spouse or civil partner;
 - ii. children under 18 years of age;
 - iii. children aged between 18 and up to 25 years of age who are financially dependent on the Staff Member and are in full time education (course duration and attendance as defined by United Kingdom Home Office rules) at an educational establishment registered with the United Kingdom Government;

- f) “Head of Delegation” means the head of the Delegation of the European Union to the United Kingdom;
- g) “High Representative” means the High Representative of the Union for Foreign and Security Policy as referred to in Articles 18 and 27 of the Treaty on European Union and in Council Decision 2010/427/EU establishing the organisation and functioning of the European External Action Service;
- h) “Official Activities” means all activities undertaken in pursuit of the Delegation’s role of representing the European Union and the European Atomic Energy Community pursuant to the Treaty on European Union, the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community as well as the acts adopted thereunder, and in establishing and running the Delegation to fulfil that role;
- i) “Official Correspondence” means all correspondence of the Delegation relating to its Official Activities;
- j) “Permanent Residents” has the meaning as stated in the policy “Who is considered to be a Permanent Resident for Privileges and Immunities in the UK?” in the Annex to this Agreement;
- k) “Premises” means the building(s), parts of building(s) and land or facilities ancillary thereto, including installations owned, made available to, maintained, occupied or used by the Delegation in the United Kingdom on a permanent or temporary basis, in order to carry out its Official Activities, subject as necessary to Secretary of State consent;
- l) “Staff Members” means the Head of Delegation, the Diplomatic Agents and the other members of the staff of the Delegation who have been appointed by the European Union and notified to the United Kingdom in accordance with Article 24 of this Agreement.

Article 2

Establishment of the Delegation of the European Union

1. The United Kingdom hereby agrees to the establishment on its territory of a Delegation of the European Union.
2. The Delegation of the European Union shall also represent the European Atomic Energy Community.
3. The Delegation may only open offices forming part of the Delegation in localities other than those where the Delegation itself is established with the prior express consent of the United Kingdom.
4. The size of the Delegation shall remain within limits considered by the United Kingdom to be reasonable and normal, having regard to the functional needs of the Delegation.

5. The United Kingdom shall include the European Union among diplomatic missions in the London diplomatic list.

Article 3

Head of Delegation

The Head of the Delegation shall be accorded treatment equivalent to that accorded to heads of mission under the 1961 Vienna Convention on Diplomatic Relations as follows:

- a) the European Union must make certain that the *agrément* of the United Kingdom has been given for the person it proposes to accredit as Head of Delegation. The United Kingdom is not obliged to give reasons to the European Union for a refusal of *agrément*;
- b) once *agrément* has been given, the Head of Delegation shall be assigned to the class of Ambassador by the United Kingdom;
- c) the Head of Delegation shall be considered as having taken up their functions in the United Kingdom either when they have presented their credentials or when they have notified their arrival and a true copy of their credentials have been presented to the Foreign, Commonwealth and Development Office in accordance with the practice prevailing in the United Kingdom. The order of presentation of credentials or of a true copy thereof shall be determined by the date and time of the arrival of the Head of Delegation;
- d) the United Kingdom shall make arrangements for the presentation by the Head of Delegation of their credentials to its Head of State;
- e) the Head of Delegation shall take precedence in their class respective to others in that class in the order of the date and time of taking up their functions in accordance with paragraph (c). Alterations in the credentials of the Head of Delegation not involving any change of class shall not affect their precedence;
- f) the procedure to be observed for the reception of the Head of Delegation shall be equivalent to the treatment of other Ambassadors or persons in the same class.

Article 4

Legal Personality

1. The European Union and the European Atomic Energy Community shall have legal personality on the territory of the United Kingdom.
2. The European Union and the European Atomic Energy Community shall have the capacity to conclude contracts, to acquire and dispose of immovable and movable property, and to institute and be a party to legal proceedings, and shall be represented, for that purpose, by the Head of Delegation.

Article 5

Immunity from Jurisdiction

Within the scope of the Delegation's Official Activities, the European Union and the European Atomic Energy Community shall have immunity from criminal, civil and administrative jurisdiction in the United Kingdom.

Article 6

Services and Support to the Premises

1. The United Kingdom recognises that certain services and support are necessary for the proper and efficient operation of the Premises. The United Kingdom undertakes to use its best efforts to facilitate the supply at the Premises of such services and support, the costs of which shall be borne by the Delegation.
2. In case of complete or partial interruption or threatened interruption of any utility services, the United Kingdom shall as far as possible, provide information and support to assist with continuity or resumption of services.

Article 7

Protection of Premises

1. The United Kingdom shall take all appropriate steps to protect the Premises against any intrusion or damage and to prevent any disturbance of the peace of the Delegation.
2. In addition, the appropriate authorities of the United Kingdom may, at the request of the Head of Delegation, take such measures inside the Premises.

Article 8

Inviolability of Premises

1. The Premises shall be inviolable. Any person having the authority to enter any place under any legal provision shall not exercise that authority in respect of the Premises unless permission to do so has been given by the Head of Delegation or by another designated Staff Member acting on behalf of the Head of the Delegation.
2. Such permission may be presumed in the event of fire or other emergencies requiring prompt protective action. Any person who has entered the Premises with the presumed permission of the Head of Delegation or other designated Staff Member shall, if so requested by the Head of Delegation or other designated Staff Member, leave the Premises immediately.

Article 9

Inviolability of Archives

The Archives of the Delegation shall be inviolable.

Article 10

Communications

The United Kingdom shall permit and protect unrestricted communication on the part of the Delegation for all the Official Activities of the Delegation and no censorship shall be applied to the Official Correspondence and other official communications of the Delegation.

Article 11

Immunity of Property

The property and assets of the Delegation, wheresoever located in the United Kingdom and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference or taking or foreclosure by executive or legislative action.

Article 12

Radio Frequencies

1. The Delegation shall have the right to install and to operate telecommunications systems on the Premises. The United Kingdom shall as far as possible use its best efforts to support the Delegation in obtaining the necessary authorisations in a timely manner for the installation and operation of fixed and mobile antennae, as well as for any other equipment related to satellite radio communications.
2. The United Kingdom shall as far as possible use its best efforts to ensure that the Delegation in accordance with the applicable law of the United Kingdom is able to make use of the radio frequencies needed to operate the facilities mentioned in paragraph 1. The frequencies shall be chosen by the Delegation in agreement with the United Kingdom. In order to support the Delegation, the United Kingdom shall as far as possible use its best efforts to carry out the necessary national and international formalities and take any necessary measures to obtain and maintain the use of radio frequencies by the Delegation.
3. The United Kingdom shall as far as possible use its best efforts to ensure the mitigation of any interference arising from radio transmissions under its jurisdiction.

Article 13

Flag and Emblem

The Delegation shall be entitled to display the flag and emblem of the European Union on the Premises and on the official vehicle of the Head of Delegation.

Article 14

Laissez-Passer

The United Kingdom shall recognise the *laissez-passer* issued by the European Union to its officials and other servants as valid travel documents for Staff Members.

Article 15

Freedom of movement

Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the United Kingdom shall ensure freedom of movement and travel within its territory for Staff Members.

Article 16

Exemption and Relief from Taxes and Duties

1. Within the scope of its Official Activities, the Delegation shall be exempt from all direct taxes on its assets, property, income, gains, operations and transactions, except in respect of charges for necessary public services (fire protection and street lighting).
2. The Delegation shall have relief under arrangements made by the United Kingdom, by way of a refund of Value Added Tax paid on the purchase of any goods or services which are of substantial value and which are used for the official purposes of the Delegation and are strictly necessary for the exercise of its Official Activities, such relief to be subject to compliance with such conditions as may be imposed in accordance with the arrangements.
3. The Delegation shall have relief under arrangements made by the United Kingdom by way of a refund of insurance premium tax, paid in the course of activities in pursuit of its official purposes and which activities are strictly necessary for the exercise of its Official Activities, such relief to be subject to compliance with such conditions as may be imposed in accordance with the arrangements.

4. The Delegation shall have relief under arrangements made by the United Kingdom, by way of a refund of customs duty or Value Added Tax paid on the importation of any hydrocarbon oil (within the meaning of the Hydrocarbon Oil (Customs and Excise) Act 1979) which is purchased in the United Kingdom for the official purposes of the Delegation and which is strictly necessary for the exercise of its Official Activities, such relief to be subject to compliance with such conditions as may be imposed in accordance with the arrangements.

Article 17

Import, Export and Disposal of Goods and Materials of the Delegation

1. The Delegation shall have relief from all import and export duties and taxes and from all import or export prohibitions and restrictions on goods (including publications), materials and equipment imported or exported by the Delegation, which are strictly necessary for the exercise of its Official Activities, such relief to be subject to compliance with such conditions as may be prescribed by the United Kingdom.
2. The United Kingdom and the Delegation shall take the necessary measures to facilitate the practical implementation of paragraph 1 of this Article.
3. If the Delegation sells or gives away the goods, materials or equipment imported with relief from duties and taxes under the terms of paragraph 1 of this Article, it shall provide the competent United Kingdom authorities with the respective import declarations and pay the applicable duties and taxes. The value of the goods to be declared shall be the value at the time of the disposal, and the competent United Kingdom authorities shall provide the Delegation with the necessary instructions regarding the procedure to be followed.

Article 18

Privileges and Immunities of Staff Members and Family Members

1. Without prejudice to Article 20, Staff Members who discharge their functions in the United Kingdom shall enjoy the privileges and immunities as specified below:
 - a) have immunity from criminal, civil and administrative jurisdiction in respect of the exercise of their functions within the scope of Official Activities during their appointment to the Delegation, including for words written and spoken;
 - b) the person of a Staff Member shall be inviolable; they shall not be liable to any form of arrest or detention. This inviolability shall only apply to Staff Members in respect of the exercise of their functions within the scope of Official Activities. Staff Members shall be treated with due respect by the United Kingdom, which shall take all appropriate steps to prevent any attack on their person, freedom or dignity;

- c) be exempt, together with their Family Members, from immigration restrictions and alien registration and from registration formalities for the purposes of immigration control;
 - d) have inviolability of their official papers and correspondence related to the exercise of their functions within the scope of Official Activities;
 - e) have the right, for their personal use or that of Family Members, to relief from customs duties on the importation of their furniture and personal effects (including at least one motor vehicle) at the time of first taking up their functions and the right on the termination of their functions to export their furniture and personal effects, subject to the conditions governing the disposal of goods imported into the United Kingdom under relief and to the general restrictions applied in the United Kingdom to imports and exports;
 - f) be exempt from national taxation on the salaries and emoluments paid by the European Union provided that the persons concerned are liable to pay tax for the benefit of the European Union on their salaries and emoluments paid to them by the European Union;
 - g) be exempt, with respect to their employment with the Delegation, from all compulsory contributions to domestic social security bodies. They shall not be entitled to any benefits paid by domestic social security bodies from the date of their appointment to the Delegation;
 - h) be exempt or have the same relief from council tax as it is accorded to or in respect of the Head of a Diplomatic Mission.
2. The immunities and inviolability referred to in paragraphs 1(a) and (b) of this Article shall not apply in respect of alleged road traffic offences and damage resulting from a vehicle driven by a Staff Member or their Family Member.
 3. The privileges and immunities referred to in paragraphs 1(c) and (e) of this Article shall not apply to any Staff Member or Family Member if they are a British National or a Permanent Resident of the United Kingdom.
 4. The privileges and immunities referred to in paragraphs 1(e), (f), (g) and (h) of this Article shall not apply to any Staff Member or Family Member if they are a British National (other than a British National who is also a National of an EU state and not resident in the UK at the time of notification in accordance with Article 24) or a Permanent Resident of the United Kingdom.

Article 19

Privileges and Immunities of Diplomatic Agents and their Family Members

1. Without prejudice to Article 20, Diplomatic Agents and their Family Members shall also enjoy the privileges and immunities as specified below:

- a) have immunity from criminal, civil and administrative jurisdiction including any measures of execution;
 - b) not be obliged to give evidence as a witness;
 - c) have inviolability of their residence;
 - d) their personal baggage shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles other than those for the official use of the Delegation or their personal use, including articles intended for their establishment, or articles the import or export of which is prohibited by the law of the United Kingdom or controlled by its quarantine regulations. Such inspection shall be conducted only in the presence of the Diplomatic Agent or Family Member concerned, or their authorised representative;
 - e) be exempt from capital gains tax other than that imposed on immovable property (not occupied by them as a principal residence) in the United Kingdom or investments in commercial undertakings in the United Kingdom;
 - f) have relief, under arrangements made by the United Kingdom, from motor vehicle tax and Value Added Tax in respect of the purchase of new motor vehicles;
 - g) have relief, in accordance with such laws and regulations as may be adopted by the United Kingdom from duties (whether of customs or excise), taxes and related charges other than charges for storage, cartage and similar services, on the importation of articles imported for their personal use, including articles intended for their establishment;
 - h) have relief by way of refund of duty (whether of customs or excise) paid on imported hydrocarbon oil (within the meaning of the Hydrocarbon Oil Duties Act 1979) or Value Added Tax paid on the importation of such oil which is bought in the United Kingdom by or on behalf of a Diplomatic Agent and their Family Member, such relief to be subject to compliance with such conditions as may be imposed in accordance with the arrangements.
2. The privileges and immunities referred to in paragraphs 1(a) and (b) of this Article shall not apply to alleged road traffic offences and damage resulting from a vehicle driven by a Diplomatic Agent or their Family Member.
 3. The immunities referred to in paragraph 1(a) of this Article shall not apply in the case of a real action relating to private immovable property situated in the territory of the United Kingdom, unless held on behalf of the European Union for the purposes of the Delegation; an action relating to succession in which the Diplomatic Agent or Family Member is involved as executor, administrator, heir or legatee as a private person and not on behalf of the European Union; an action relating to any

professional or commercial activity exercised by the Diplomatic Agent or Family Member outside their Official Activities.

4. The privileges and immunities referred to in paragraphs 1(a) and (b) of this Article shall not apply to any Diplomatic Agent or Family Member if they are a British National or a Permanent Resident of the United Kingdom.
5. The privileges and immunities referred to in paragraphs 1(c), (d), (e), (f), (g) and (h) of this Article shall not apply to any Diplomatic Agent or Family Member if they are a British National (other than a British National who is also a National of an EU state and not resident in the UK at the time of at the time of notification in accordance with Article 24) or a Permanent Resident of the United Kingdom.

Article 20

Purpose and Waiver of Privileges and Immunities

1. The privileges and immunities accorded under this Agreement to Staff Members and their Family Members are provided solely to ensure in all circumstances the unimpeded functioning of the Delegation and the complete independence of the persons to whom they are accorded.
2. The privileges and immunities accorded under this Agreement may be waived by the European Union upon request from the relevant United Kingdom authorities, whose request will be transmitted by the Foreign, Commonwealth and Development Office to the Delegation. The European Union shall process such requests without undue delay. The Head of Delegation shall communicate the European Union's decision to the Foreign, Commonwealth and Development Office. Waiver must always be express.
3. Where a serious offence, or a series of minor offences, are alleged to have been committed by any person enjoying privileges and immunities under this Agreement, and such privileges and immunities have not been waived in accordance with this Article, the United Kingdom may notify the Delegation that the person concerned is no longer acceptable. In any such case, the European Union, shall, as appropriate, either recall the person concerned or terminate their appointment to the Delegation.
4. The initiation of proceedings by any person enjoying immunity under this Agreement shall preclude them from invoking immunity from jurisdiction in respect of any counterclaim directly connected with the principal claim.
5. Waiver of immunity from jurisdiction in respect of civil or administrative proceedings shall not be held to imply waiver of immunity in respect of the execution of the judgement, for which a separate waiver shall be necessary.

Article 21

Commencement and Termination of Functions

1. Every person notified to the Foreign, Commonwealth and Development Office in accordance with Article 24 who is entitled to privileges and immunities under this Agreement shall enjoy them from the moment they enter the territory of the United Kingdom for the purpose of taking up functions, or if already in its territory, from the moment when they are so notified.
2. When the functions of a person enjoying privileges and immunities have come to an end, privileges and immunities shall normally cease at the moment when they leave the country, or on expiry of a reasonable period in which to do so, but shall subsist until that time, even in case of armed conflict. However, with respect to acts performed by such a person in the exercise of their official functions within the scope of Official Activities, immunity shall continue to subsist.
3. In case of the death of a Staff Member, Family Members shall continue to enjoy the privileges and immunities to which they are entitled until the expiry of a reasonable period in which to leave the country.

Article 22

Abuse of Privileges and Immunities

1. Without prejudice to their privileges and immunities, all persons enjoying privileges and immunities under this Agreement have a duty to respect the laws and regulations of the United Kingdom and a duty not to interfere in the internal affairs of the United Kingdom.
2. The Delegation shall co-operate at all times with the appropriate authorities in order to prevent any abuse of the privileges and immunities and facilities provided for in this Agreement. The right of the United Kingdom to take all precautionary measures in the interests of its security shall not be prejudiced by any provision in this Agreement.
3. The Delegation shall not permit the Premises to become a refuge from justice for persons who are avoiding arrest or service of legal process under the law of the United Kingdom or against whom an order of extradition or deportation has been issued by the appropriate authorities.

Article 23

Fine Quality Goods

In addition to the provisions in Articles 18 and 19, unless they are British Nationals or Permanent Residents of the United Kingdom, the Head of Delegation will have relief from Value Added Tax on the supply of fine quality goods of United Kingdom manufacture purchased on a substantial scale for the furnishing of their principal residence as is accorded to or in respect of the Head of a Diplomatic Mission.

Article 24

Notification of Staff Members and Family Members

1. The Delegation shall, upon entry into force of this Agreement and at least once a year thereafter, notify the Foreign, Commonwealth and Development Office, with a list of all Staff Members, indicating in each case whether the individual is a Diplomatic Agent or other Staff Member and whether the individual is a British National or a Permanent Resident of the United Kingdom. Such notification shall also be made in respect of all Family Members.
2. The Delegation shall notify the Foreign, Commonwealth and Development Office of the appointments, departures and change of circumstances of Staff Members and their Family Members as the case may be.
3. The United Kingdom shall issue to all Staff Members, except British Nationals and Permanent Residents of the United Kingdom, on notification of their appointment or on arrival, a card bearing the photograph of the holder and identifying them as a Staff Member.

Article 25

Implementation and Amendment

1. At the request either of the High Representative or of the United Kingdom, consultations may take place regarding the implementation or amendment of this Agreement.
2. Any amendment shall be agreed in writing between the High Representative, or their representative, and a duly authorised representative of the United Kingdom, including the date that any such amendment shall enter into force.

Article 26

Disputes

Any dispute between the United Kingdom and the European Union concerning the interpretation or application of this Agreement shall be settled by consultations, negotiation or other agreed mode of settlement, with a view to finding an amicable solution.

