Regulation (EU) 2019/592 of the European Parliament and of the Council of 10 April 2019 amending Regulation (EU) 2018/1806 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, as regards the withdrawal of the United Kingdom from the Union

REGULATION (EU) 2019/592 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 10 April 2019

amending Regulation (EU) 2018/1806 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, as regards the withdrawal of the United Kingdom from the Union

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 77(2)(a) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure[(1)],

Whereas:

(1) On 29 March 2017, the United Kingdom notified the European Council of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union (TEU). On 21 March 2019, the European Council agreed to extend the period provided for in Article 50(3) TEU to 22 May 2019, provided that the United Kingdom House of Commons approves the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community[(2)] (the 'Withdrawal Agreement'). In the event the United Kingdom House of Commons does not approve the Withdrawal Agreement, the European Council agreed to an extension until 12 April 2019.

(2) Under Article 21 of the Treaty on the Functioning of the European Union (TFEU) and Directive 2004/38/EC of the European Parliament and of the Council[(3)], citizens of the Union have the right to move and reside freely within the territory of the Member States, including the right to enter the territory of the Member States without a visa or equivalent formalities.

(3) As a consequence of the United Kingdom's withdrawal from the Union, the Treaties and Directive 2004/38/EC, along with the right to enter the territory of the Member States without a visa or equivalent formalities, will cease to apply to nationals of the United Kingdom who are British citizens. It is therefore necessary to include the United Kingdom in one of the annexes to Regulation (EU) 2018/1806 of the European

Parliament and of the Council[4]. Annex I lists the third countries whose nationals are required to be in possession of a visa when crossing the external borders of the Member States and Annex II lists those third countries whose nationals are exempt from that requirement.

(4) Gibraltar is not part of the United Kingdom. Union law has been applicable to Gibraltar to the extent provided for in the 1972 Act of Accession only by virtue of Article 355(3) TFEU. The addition of the United Kingdom to Part 1 of Annex II to Regulation (EU) 2018/1806 will not cover British overseas territories citizens who have acquired their citizenship from a connection with Gibraltar. Gibraltar should thus be listed along with other British overseas territories in Part 3 of Annex II to Regulation (EU) 2018/1806.

(5) The criteria which should be taken into account when determining, on the basis of a case-by-case assessment, the third countries whose nationals are subject to, or exempt from, the visa requirement are laid down in Article 1 of Regulation (EU) 2018/1806. Those criteria include illegal immigration, public policy and security, economic benefit, in particular in terms of tourism and foreign trade, and the Union's external relations with the relevant third countries, including, in particular, considerations of human rights and fundamental freedoms, as well as the implications of regional coherence and reciprocity.

(6) Taking account of all the criteria listed in Article 1 of Regulation (EU) 2018/1806, it is appropriate to exempt nationals of the United Kingdom who are British citizens from the visa requirement when travelling to the territory of the Member States. Considering the geographical proximity, the link between economies, the level of trade and the extent of short-term movements of persons between the United Kingdom and the Union for business, leisure or other purposes, visa-free travel should facilitate tourism and economic activity, thereby bringing benefits to the Union.

(7) The United Kingdom should thus be included in Annex II to Regulation (EU) 2018/1806 as regards British citizens.

(8) This Regulation is based on the expectation that, in the interest of maintaining close relations, the United Kingdom will grant full visa reciprocity to the nationals of all Member States. In the event that the United Kingdom introduces a visa requirement for nationals of at least one Member State in the future, the reciprocity mechanism provided for in Article 7 of Regulation (EU) 2018/1806 should apply. The European Parliament, the Council, the Commission and the Member States should act without delay in applying the reciprocity mechanism. The Commission should monitor the respect of the principle of reciprocity on a continuous basis and immediately inform the European Parliament and the Council of any developments which could endanger the respect of that principle.

(9) As regards Iceland and Norway, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latters' association with the implementation, application and development of the Schengen *acquis*[5], which fall within the area referred to in point B of Article 1 of Council Decision 1999/437/EC[6].

(10) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*[7] which fall within the area referred to in points B and C of Article 1 of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC[8].

(11) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*[9] which fall within the area referred to in points B and C of Article 1 of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU[10].

(12) This Regulation constitutes a development of the provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC[11]; the United Kingdom is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

(13) This Regulation constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC[12]; Ireland is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

(14) This Regulation constitutes an act building upon, or otherwise relating to, the Schengen *acquis* within, respectively, the meaning of Article 3(1) of the 2003 Act of Accession, Article 4(1) of the 2005 Act of Accession and Article 4(1) of the 2011 Act of Accession.

(15) This Regulation should enter into force on the day following that on which Union law ceases to apply to the United Kingdom.

(16) Regulation (EU) 2018/1806 should therefore be amended,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EU) 2018/1806 is amended as follows:

(1) In Article 6(2), point (d) is replaced by the following:

(d) without prejudice to the requirements stemming from the European Agreement on the Abolition of Visas for Refugees of the Council of Europe signed at Strasbourg on 20 April 1959, recognised refugees and stateless persons and other persons who do not hold the nationality of any country who reside in Ireland and are holders of a travel document issued by Ireland, which is recognised by the Member State concerned.;