

IN THE UPPER TRIBUNAL
(ADMINISTRATIVE APPEALS CHAMBER)

BETWEEN:

[REDACTED]

Appellant

-and-

SECRETARY OF STATE FOR WORK AND PENSIONS

Respondent

-and-

**THE INDEPENDENT MONITORING AUTHORITY
FOR THE CITIZENS' RIGHTS AGREEMENTS**

Intervener

WRITTEN SUBMISSIONS BY THE INDEPENDENT MONITORING AUTHORITY

References to "UT Bundle" are to the Upper Tribunal Bundle running to 55 pages provided to the IMA on 4 February 2026

Introduction

1. These are written submissions on behalf of the Independent Monitoring Authority for the Citizens' Rights Agreements ("**the IMA**") in the above appeal, pursuant to the directions of UT Judge Wright dated 28 January 2026 (pages 53-55 UT Bundle). In accordance with paragraph 7 of those directions, the IMA indicated on 26 February 2026 that it wished to intervene in this appeal.
2. The IMA's intervention is pursuant to its statutory duties to monitor and promote the adequate and effective implementation and application of Part 2 of the EU-UK Withdrawal Agreement ("**WA**") in the UK, which concerns Citizens' Rights.¹

¹ The UK was required to establish an independent authority with powers equivalent to the European Commission for the purposes of Part 2 of the WA under Article 159(1) of the WA. The IMA was duly established and given

3. The IMA has been asked to indicate whether it wishes to intervene in this appeal and, if so, to file written submissions by 27 March 2026 in respect of the operation of the WA, particularly the interpretation of 18(3) and the status of individuals, such as the Appellant, who have made an application under the EU Settlement Scheme (“EUSS”) and receive a Certificate of Application (“CoA”), which at the relevant time remains undetermined. As noted by UT Judge Wright, the potential scope of Article 18(3) is also being considered by the Upper Tribunal in *GN v SSWP (UA-2023-001153-USTA)*, in which the IMA is an intervener.
4. The IMA submits, consistently with the submissions it has made in *GN*, that the proper interpretation of Article 18(3) is that a person who has rights under the WA, and who in the absence of the host State having exercised the right to require an application to be made under Article 18 would be able to exercise those rights on a declaratory basis, remains entitled to those rights pending a decision under the constitutive scheme established under Article 18. In other words, Article 18(3) requires continued application of the declaratory system of rights pending a final and effective constitutive decision.
5. The Secretary of State’s position appears to be that a person is entitled to enjoy the rights under Part 2 of the WA provided that they meet the conditions for that right. Thus, for present purposes, a person is entitled to receive Universal Credit (“UC”) where they have a right to reside in the UK pursuant to Article 13 WA and they were exercising that right during the period to which UC entitlement is claimed. However, the Secretary of State also argues (in line with the Appellant) that a person who holds a valid CoA as a result of a pending EUSS application benefits from temporary protection under Article 18(3) on a “deemed” basis, and that they therefore enjoy all rights provided for under Part 2 of the WA until the question of whether they fall within personal scope under Article 10 WA is finally determined.² In other words, Article 18(3) confers those rights on them regardless of whether the individual is within scope of the WA or would be found to meet the terms of Article 10 in due course. The Secretary of State submits that the First-tier

powers of intervening in legal proceedings in s.15 and Sch.2 to the European Union (Withdrawal Agreement) Act 2020 (“EUWAA”).

² The Secretary of State refers to these as the “temporary protection” and “entitlement” issues. The Secretary of State’s position on the temporary protection issue is set out at paragraphs 8 and 19-25 of her (undated) submissions seeking disposal of the appeal: pages 45, 49-50 UT Bundle.

Tribunal erred in law on this point and invites the Upper Tribunal to allow the appeal and remit the matter for a fresh hearing.

6. For the reasons below, the IMA does not consider that those issued with a CoA and whose applications have not yet been determined are automatically deemed to be within scope of Article 10 WA on an interim basis by virtue of Article 18(3). A CoA is merely an acknowledgment of an application for beneficiary status, and in and of itself cannot bring an individual within the scope of the WA, even on a “deemed” basis. Properly understood, Article 18(3) provides an interim protection only for those with pending applications who already fall within the scope of the WA. If an individual is not within scope, then while the CoA provides for a temporary right of residence under domestic law, and the Secretary of State may choose to treat it as demonstrating eligibility for benefits, it does not confer any rights that the individual would not otherwise be entitled to under the WA.
7. The Secretary of State’s latest submissions identify a further issue relating to whether the Appellant had a qualifying right to reside under Article 13 WA for the purposes of claiming UC (i.e. the “entitlement” issue).³ That issue is specific to the facts of this case, and the IMA does not seek to intervene in relation to it, save to note that in order to benefit from Article 23 WA and therefore claim UC, an individual granted a CoA and who is found to be within scope of Article 10 WA at 31 December 2020 must nonetheless meet the conditions specified within Article 13 (or otherwise benefit from a right to permanent residence under Article 15).⁴

Background

8. The IMA defers to the principal parties as to any detailed factual disputes concerning the personal circumstances of the Appellant.⁵ The essential facts for the purposes of the analysis of the 18(3) WA issue, as the IMA understands them, are as follows.

³ See paragraph 5 of the Secretary of State’s (undated) submissions: page 45 UT Bundle.

⁴ It is important to distinguish between (i) Article 10 WA which concerns personal scope, and (ii) Article 13 WA which establishes rights of residence under the WA. Article 13 must be understood on its own terms and in accordance with EU case law and principles, and the interpretative provisions in Article 4 WA (see Legal Framework below). A number of the rights contained in Part 2 WA, including those under Article 13, are conditional in nature and therefore the extent to which those rights apply will be fact and case sensitive.

⁵ It has not been considered necessary for the IMA to be provided with any wider documentation concerning the particular facts and evidence of this case in order for it to make written submissions on the operation of Article 18 of the WA.

9. The Appellant is an EU citizen with [REDACTED] nationality, born on [REDACTED]. She arrived in the UK on 4 August 2022 with her children [REDACTED] (born [REDACTED]) and [REDACTED] (born [REDACTED]).
10. The Appellant made a number of unsuccessful applications for status under the EUSS in Appendix EU of the Immigration Rules:
 - 10.1. 29 June 2021, refused on 15 September 2021
 - 10.2. 29 January 2023, refused on 24 April 2023
 - 10.3. 1 June 2023, refused on 19 August 2023
11. On 9 August 2023, Appendix EU was amended so that for an application to be valid (and a person's eligibility considered) it had to be made by the "required date".⁶ Where an application is made after the relevant deadline, an applicant is required to demonstrate that there are "reasonable grounds" for their delay in applying.⁷
12. The Appellant thereafter made two further applications under the EUSS:
 - 12.1. 18 September 2023, refused on 3 December 2023
 - 12.2. 9 January 2024, refused on 31 January 2024. (This was subsequently appealed and dismissed by the First-tier Tribunal on 27 August 2025. The First-tier Judge's decision records that the Appellant's application was considered on the basis of her relationship with her son's father and on the basis of her relationship with her son, [REDACTED]. The Tribunal also found that the Appellant was unable to meet the definition of a person with a derivative or *Zambrano* right to reside as she and her son were not in the UK before "21 December 2020" (likely intended to be 31 December 2020) and the route was, in any event, closed to new applications from 8 August 2023: see page 41 UT Bundle.)

⁶ Where an applicant was living in the UK by 31 December 2020, the deadline for them to apply to the EUSS was 30 June 2021. For those applying as a family member and arriving in the UK on or after 1 April 2021, the deadline is 90 days from the date they first arrived in the UK after 31 December 2020 (or, if later, when their permission to be in the UK expired in the case of those who entered the UK as a visitor). On 8 October 2024, Appendix EU was further amended (statement of changes to the Immigration Rules HC 217) so that those applying as joining family members were required to apply within three months of their *first* arrival in the UK since 31 December 2020, rather than their most recent arrival.

⁷ The Secretary of State for the Home Department also amended its published EUSS caseworker guidance on 9 August 2023 and 16 January 2024. This requires a case-by-case assessment of the circumstances and reasons for a late application.

13. On 13 October 2023, the Appellant made a claim for UC. The IMA understands that at the relevant time, the Appellant’s EUSS application of 18 September 2023 had yet to be determined, and the Appellant had been granted a CoA.
14. On 26 October 2023, the Secretary of State decided that the Appellant passed the right to reside and habitual residence test as an EEA national with a CoA and a worker in genuine and effective employment. She was subsequently found to be entitled to UC.
15. On 31 January 2024, however, the Secretary of State revised her decision on the Appellant’s entitlement to UC after receiving information that the Appellant had been refused a national insurance number,⁸ and further checks revealed that she had made a number of unsuccessful applications for the EUSS (see above). The Secretary of State “closed” the Appellant’s claim for UC on the basis that she had not been granted a valid EUSS status and was treated as a Person Subject to Immigration Control.
16. The Appellant challenged the Secretary of State’s decision by way of mandatory reconsideration, followed by an appeal to the First-tier Tribunal which was refused on 25 October 2024. The First-tier Tribunal’s decision is the subject of this appeal before the Upper Tribunal.

The legal framework

The Withdrawal Agreement

17. The WA is an international treaty between the UK and the member states of the EU. The principles in the Vienna Convention on the Law of Treaties govern its interpretation, and as such it must be interpreted in accordance with its context and purpose.⁹ This includes the backdrop of the UK’s prior membership of the EU, and the need to ensure a degree of continuity and preserve rights accrued by citizens within the WA’s scope following the UK’s withdrawal from the EU.

⁸ The IMA understand that a national insurance number has since been granted on 28 July 2024.

⁹ As affirmed in several recent cases such as *R (IMA) SSHD* [2022] EWHC 3274 (Admin), [64]-[70]; *Celik v SSHD* [2023] EWCA Civ 921, [53]; *R (Ali) v SSHD* [2023] EWHC 1615 (Admin), [82]; *SSWP v AT* [2023] EWCA Civ 1307, [80]. Under Article 31(1) of the Vienna Convention, any international treaty has to be interpreted in its “context and in the light of its object and purpose”.

18. Part 1 WA includes Article 4, which contains the overarching interpretative provisions for construing the WA:
 - 18.1. Article 4(1) provides that the “provisions of [the WA] and the provisions of Union law made applicable by [the WA] shall produce” in the UK “the same legal effects as those which they produce within the Union and its Member States”.
 - 18.2. Article 4(3) requires that Union law or provisions or concepts thereof “shall be interpreted and applied in accordance with the methods and general principles of Union law”. Article 2(a) defines “Union law” to include a number of specific EU treaties, general principles, and the EU Charter of Fundamental Rights (“the Charter”).
 - 18.3. Article 4(4) provides that Union law provisions or concepts thereof shall be “interpreted in conformity with” relevant CJEU case law from before the end of the transition period.
 - 18.4. Article 4(5) states that UK courts “shall have due regard” to relevant CJEU case law from after the end of the transition period.
19. The WA has been implemented in domestic law similarly to how EU law was previously implemented in the UK. Sections 7A(1) and (2) of the European Union (Withdrawal) Act 2018 (“EUWA”) creates a new “conduit pipe” for the WA so that all “rights, powers, liabilities, obligations, restrictions, remedies and procedures” arising under it are available automatically in domestic law. Section 7A(3) EUWA provides that every other provision of domestic legislation, including other provisions of the EUWA itself, are subject to the general implementation of the WA into domestic law. It follows that the WA has supremacy over the domestic legal framework.¹⁰

¹⁰ The Retained EU Law (Revocation and Reform) Act 2023 (“REULA”) made changes to the EUWA which took effect after the end of 2023, including *inter alia* amending section 5 EUWA to make it clear that the principle of the supremacy of EU law is not part of domestic law, applying to any enactment or rule of law whenever passed or made. Notably, the changes made to the EUWA by the REULA did not affect section 7A EUWA, and the latter remains in force.

Part 2 of the Withdrawal Agreement

20. Part 2 WA sets out the provisions on Citizens' Rights. Article 10 defines the personal scope of the WA. Article 10(1)(a) provides:
- “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 ...”
21. Article 13 (“Residence rights”), cross-refers to Article 21 Treaty on the Functioning of the European Union (“TFEU”) and the Citizens’ Rights Directive 2004/38/EC (“CRD”). The CRD provided for a scheme of residence which varied according to the length of residence and activity of the citizens concerned:
- 21.1. EU citizens and their family members have an unqualified right of residence in other member states for a period of up to three months: Article 6 CRD.
- 21.2. Once three months have expired, EU citizens have the right to continue to reside in another member state if they meet one of the conditions in Article 7(1) CRD:
- 21.2.1. They are workers or self-employed persons (Article 7(1)(a)). Article 7(3) sets out certain conditions in which a citizen can retain the status of worker or self-employed (for example because of illness or accident).
- 21.2.2. They have sufficient resources for themselves and their family members not to become a burden on the social assistance system and have comprehensive sickness insurance cover in the host State (Article 7(1)(b)).
- 21.2.3. They are enrolled at a private or public establishment for a course of study, and they have comprehensive sickness insurance cover and sufficient resources for themselves and their family members (Article 7(1)(c)).
- 21.2.4. They are family members accompanying or joining a Union citizen who satisfies one of the conditions in Articles 7(1)(a)-(c) (Article 7(1)(d)). These rights extend to non-EU family members (Article 7(2)).

22. The above provisions from the CRD are reflected in Article 13 WA. Article 13(4) provides that the host State may not impose any limitations or conditions for obtaining, retaining or losing residence rights other than those provided for in Part 2 Title II; and that any “discretion” is to be exercised in favour of the person concerned.
23. Articles 15 and 16 concern the right to permanent residence. Article 15 provides for a permanent right of residence after five years’ “continuous” lawful residence, with “periods of legal residence or work in accordance with Union law before and after the end of the transition period” being included in the calculation of the qualifying period necessary for the acquisition of a right of permanent residence under Article 15.
24. Article 16 provides that those who resided legally in a host State for less than five years (meeting Article 7 CRD conditions) can acquire permanent residence after completing five total years of residence. Legal residence and work periods both before and after the transition period count towards this qualifying period.
25. The residence rights provided for in Article 7(1) CRD are inherently *conditional*. They become *unconditional* only once the person has resided lawfully, i.e. in compliance with the conditions of being a worker or student or similar, for five years under Article 16 CRD. Following that point, residence rights are not subject to the conditions of being a worker, being self-sufficient, or similar as set out in Article 7 CRD. The same position pertains under Article 15 WA. Further, Article 16 WA permits those who have accumulated lawful residence falling short of five years to acquire the right to reside permanently if they continue the lawful residence after the end of the transition period.
26. Article 18 concerns the issuance of residence documents. It provides as follows:
- “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 be not 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;

...

(g) the document evidencing the status shall be issued free of charge or for a charge not that imposed on citizens or nationals of the host State for the issuing of similar documents;

...

(q) the new residence document shall include a statement that it has been issued in accordance with this Agreement;

...

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 ... 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.”

The IMA's submissions

Article 18 WA

27. The UK Government's constitutive scheme under Article 18(1) WA, as implemented domestically through the EUSS, requires individuals "to apply for a new residence status which confers the rights under this Title and a document evidencing such status". Article 18(1)(a) confirms that the purpose of the application procedure is "to verify whether the applicant is entitled to the residence rights" under Part 2, and if so, the applicant will have "a right to be granted the residence status and the document evidencing that status".
28. In *R (IMA) v Secretary of State for the Home Department* [2022] EWHC 3274 (Admin), Lane J clarified that the purpose of a constitutive residence scheme such as that under Article 18(1) was to establish a "bright line" between those who were beneficiaries under the WA and those who were not: [93], [182]-[183]. Lane J also held that the "new residence status" under Article 18(1) conferred rights which were inherently *conditional*, and a document issued under Article 18(1) evidenced a "qualified right of residence" subject to those conditions: [133]-[134], [151], [156], [158], [181].
29. This reflects what the IMA submits is the correct view of the nature of the grant of status under Article 18(1), which is that it is not *itself* a form of residence under the WA absent compliance with the substantive requirements of the WA (i.e. Article 13). In other words, for an individual to hold residence status for the purpose of the WA, they must demonstrate compliance with the underlying WA conditions both at the time of being granted pre-settled status under the EUSS, but also at the point where they seek access to social assistance.
30. As Lane J recognised in *R (IMA)*, a wider cohort of persons are eligible to apply for EUSS status than would have residence rights under the WA:

"134. ... the defendant, in framing the EUSS, has adopted a policy which is more generous than what is required by the WA, in that leave may be granted under the EUSS by reference to "mere" residence in the United Kingdom at the relevant point in time, rather than residence in accordance with EU free movement rights. This policy, however, sheds no light on the interpretative task for this court."

31. While the EUSS allowed a broader category of citizens to apply, not all applicants are able to rely on the protections provided by the WA. As explained above, Article 18(1) status reflects an individual's status as a "beneficiary" of the WA: see Lane J in *R (IMA)*, [93], [182]-[183]. This is consistent with the position of the European Commission which described pre-settled status as recognising an individual's status as a "beneficiary" of the WA, with the substantive residence rights afforded to a beneficiary depending on their personal circumstances at the time: see *R (IMA)*, [90], [60].
32. This view was confirmed recently in *Fertré v Vale of White Horse District Council and others* [2025] EWCA Civ 1057,¹¹ where the Court of Appeal, referring to Lane J's decision in *R (IMA)*, held that Article 18 is an administrative or operational provision rather than a provision concerned with the *grant* of rights: [103]-[107], [111]. While the new residence status in Article 18 is a means by which a person can access rights which they already hold or might come to hold under the WA and preserved from EU law, it does not itself confer those rights: [113]. Accordingly, where an individual had not come into possession of an EU right of residence, whether by virtue of Article 6 or 7 CRD (preserved by Article 13(1) WA), then they would have no right to reside on the basis of the WA and instead only have a domestic law right to remain in the UK: [115]-[116].
33. With that in mind, the IMA does not consider that the Secretary of State is correct to contend that Article 18(3) *automatically* provides temporary protection in the form of a grant of Part 2 rights on a "deemed" basis until the position under Article 10 is determined. The purpose of an application under Article 18(1) is to establish whether an individual is *entitled to* beneficiary status under in Part 2 WA. While Article 18(3) provides for temporary protection to those who have made a valid application and have been issued a CoA, this is not a grant of Part 2 rights *per se*.
34. Instead, Article 18(3) treats the applicant as if they had been granted the status they are *entitled to* at the point of application, rather than conferring new rights which they did not enjoy previously. This is to be expected, otherwise even a hopeless or speculative application would result in an individual falling within the scope of Part 2 WA and benefiting from new EU law rights which they never had, purely on the basis of simple

¹¹ The IMA understands that an application for permission to appeal to the Supreme Court has been lodged.

residence. If those persons are within the scope of the WA, they are entitled to rights on an interim basis under Article 18(3). If they are not, then a CoA provides for a temporary right of residence which derives from the generous policy of the UK under domestic law, not from Article 18(3), and it does not confer any further rights.

35. The IMA considers that this interpretation is entirely consistent with the context and purpose of the WA, and the constitutive scheme the UK has chosen to implement:

35.1. First, as the Court of Appeal stated in *Fertré*, there is no suggestion in the recitals of the WA that it was intended to broaden eligibility to social benefits for EU nationals in the UK. To confer on EU nationals living in the UK a right to claim social benefits even though they had not possessed that right previously in EU or domestic law would mark a significant departure from the position as it existed before Brexit, which would be expected to be very clearly expressed in the WA itself: [84]. This applies equally to those with a CoA, but who did not previously have any form of EU right.

35.2. Second, the provisions of the WA dealing with citizens' rights reflect the position as it was agreed by the UK, the EU and Member States, negotiated in the context of EU law which operates a declaratory system of rights. There is therefore nothing novel in individuals being required to demonstrate their entitlement when seeking to enforce their rights in another Member State. Again, the interpretation suggested by the Secretary of State, which would confer all rights unconditionally by virtue of Article 18(3), departs from the existing position in EU law, and the position in the UK before Brexit.

GN v SSWP

36. The IMA's intervention in *GN* concerns whether a person who has only been issued with a CoA can be considered to be residing under Article 23 WA for the purposes of claiming UC. One of the issues being considered in that appeal is how Article 18(3) applies in circumstances where an individual has made a valid EUSS application and receives a CoA, but that application remains undetermined. In summary, the IMA considers that a person who has only been issued with a CoA does not thereby acquire rights they would not otherwise be entitled to under the WA, and they therefore cannot benefit from rights such as those under Article 23. To benefit from the latter, they must

be residing on the basis of Article 13 by meeting the conditions in the CRD referred to in that article or have acquired a right of permanent residence under Article 15.

37. The IMA's position in *GN* is consistent with its approach in the present case. In both cases, Article 18(3) provides an interim protection for those with pending applications who fall *within* the scope of the WA; whilst for those who do not meet the limitations and conditions of the WA, a CoA provides for a temporary right of residence under domestic law only.
38. The Secretary of State's position in the present case is that the Appellant is "deemed" to be in scope of the WA for all periods where she held a valid CoA, and it is suggested that the Secretary of State has made the same submission in *GN*.¹² As far as the IMA is aware, however, this is not the position advanced by the Secretary of State before the Upper Tribunal in *GN*. There, the Secretary of State has invited the Upper Tribunal to proceed on the basis that the appellant has "deemed to have applied to him" the rights under Part 2 WA pending the final determination of their EUSS application on the specific basis that there is an ongoing dispute about whether they are within scope of Article 10, in circumstances where they claim to have accrued a right of permanent residence prior to the end of the transition period.
39. For completeness, the Secretary of State's submissions in *GN* are as follows (underlined emphasis added):¹³

"99. The SSWP's position is as summarised at §83 above: a person who is clearly outside the scope of Part Two WA cannot rely on any of its protections, including in Art.18(3) WA, but where (as in this case) there is a dispute as to whether a person falls within scope and they have made a valid Art.18(1) WA application and hold a CoA, the UT can treat them as a person who benefits from the rights under Title II Part Two WA, including Arts.13 and 23 WA, pending determination of that application and any subsequent appeal against refusal, without needing to determine whether they are or are not, in fact, within the personal scope under Art.10(1) WA. That would not be the case, however: (1) where the application for leave to enter or remain under the EUSS is solely on one of the bases where the EUSS is more generous than the WA and any leave granted would take effect purely as a matter of domestic, not WA, law (i.e. *Zambrano* or *Surinder Singh* cases or a family member of a person of Northern Ireland) – since in those circumstances there can be no sensible dispute

¹² See footnote 1 of the Secretary of State's (undated) submissions: page 45 UT Bundle.

¹³ Secretary of State's written submissions dated 16 June 2025.

about whether or not the person is within scope; or (2) where the conditions under Art.20(4) WA in respect of fraudulent or abusive applications apply (as is expressly stated in Art.18(3) WA). The SSWP also reserves her position in respect of other factual scenarios: they would need to be addressed in a case where they arise.

100. As noted above, the rights that Art.18(3) WA deems to apply to an applicant are conditional in nature. Further, the benefit of Art.18(3) WA is only temporary, pending a final decision on the application and the resolution of any subsequent appeal, where applicable.

101. In fact in the present case, on its facts, the issues of whether GN is in scope under Art.10(1) WA and whether he is residing in accordance with the conditions and limitations attaching to the rights deemed to apply by Art.18(3), would, in any event, turn on the circumstance – namely whether GN had already acquired an EU law right of permanent residence before the end of the TP.”

40. The position taken by the Secretary of State in *GN* is therefore highly fact specific, being based upon policy / administrative reasons for what she considers to be the most effective approach to determining the appeal, rather than the correct application of Part 2 of the WA as a matter of law. That is a position the Secretary of State is entitled to adopt. Similarly, here, it is open to the Secretary of State, as a matter of policy, to treat the Appellant as being within scope of Part 2 of the WA until these proceedings are finally determined. But that does not (and cannot) determine how the WA, and in particular Article 18(3), should be interpreted. The IMA’s role is to assist the Tribunal as an impartial and independent party as to the proper interpretation of Part 2 WA. As stated above, the IMA does not consider that the Appellant can rely solely on possession of a CoA to fall within scope of the WA, even on an interim basis under Article 18(3), or to benefit from EU law rights which she did not enjoy previously.
41. On the question of scope, the IMA does not possess sufficient information to assess whether the Appellant would fall within Article 10 WA. The IMA is not in receipt of any of the Appellant’s applications for EUSS. The First-tier Tribunal’s decision of 27 August 2025 – which dismissed the Appellant’s appeal against the refusal of her EUSS application made on 9 January 2024 – found that the Appellant was unable to qualify for pre-settled or settled status under the EUSS. That decision, however, post-dates her UC application. The IMA notes that, on the basic facts of that decision, it appears unlikely that the Appellant would fall within the scope of the WA. In any event, these

are issues of fact for the Tribunal to determine, on which the IMA does not consider it appropriate to intervene.

Conclusion

42. For the reasons above:

42.1. The IMA considers that Article 18(3) provides interim protection for those with pending applications who fall *within* the scope of the WA. Article 18(3) treats the applicant as if they had been granted the status they are *entitled to* at the point of application, rather than conferring new rights which they did not enjoy previously. If an applicant is not within scope of the WA, then a CoA provides for a temporary right of residence which derives from the generous policy of the UK under domestic law, not from Article 18(3). It would therefore be incorrect to adopt a blanket approach by suggesting that an individual may rely on Article 18(3) as meaning they are within scope of Article 10 WA while their EUSS application is pending.

42.2. If the Secretary of State wishes to treat the Appellant as if she were within the scope of the WA whilst her application is pending, that is a policy position which she is entitled to adopt. It does not, however, reflect the IMA's understanding of (nor is it capable of determining) the proper interpretation of Part 2 of the WA and in particular Article 18(3).

GALINA WARD KC
EDWARD ARASH ABEDIAN

Landmark Chambers
180 Fleet Street
London, EC4A 2HG

27 March 2026