
SCOTTISH STATUTORY INSTRUMENTS

2019 No. 330

**HIGH COURT OF JUSTICIARY
SHERIFF APPEAL COURT
SHERIFF COURT
JUSTICE OF THE PEACE COURT**

**Act of Adjournal (Criminal Procedure Rules 1996 Amendment)
(Challenges to Validity of EU Instruments (EU Exit)) 2019**

*Made - - - - 21st October 2019
Laid before the Scottish
Parliament - - - - 22nd October 2019
Coming into force in accordance with paragraph 1(2)*

The High Court of Justiciary makes this Act of Adjournal under the powers conferred by section 305 of the Criminal Procedure (Scotland) Act 1995(1) and all other powers enabling it to do so.

Citation and commencement, etc.

1.—(1) This Act of Adjournal may be cited as the Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (Challenges to Validity of EU Instruments (EU Exit)) 2019.

(2) It comes into force on exit day.

(3) A certified copy is to be inserted in the Books of Adjournal.

Amendment of the Criminal Procedure Rules 1996

2.—(1) The Criminal Procedure Rules 1996(2) are amended in accordance with this paragraph.

(2) After Chapter 69 (Labour Market Enforcement Orders)(3) insert—

(1) 1995 c.46. Section 305 was amended by section 111(1) of the Criminal Justice (Scotland) Act 2016 (asp 1) and S.S.I. 2015/338, and was extended by section 386(3)(a) of the Proceeds of Crime Act 2002 (c.29), section 36A(4) of the Serious Crime Act 2007 (c.27), and section 32(5) of the Psychoactive Substances Act 2016 (c.2).

(2) The Criminal Procedure Rules 1996 are in schedule 2 of the Act of Adjournal (Criminal Procedure Rules) 1996 (S.I. 1996/513), last amended by S.S.I. 2019/321.

(3) Chapter 69 was inserted by S.S.I. 2019/139.

“CHAPTER 70

CHALLENGES TO VALIDITY OF EU INSTRUMENTS (EU EXIT)

Interpretation and application

70.1.—(1) In this Chapter—

“the 2019 Regulations” means the Challenges to Validity of EU Instruments (EU Exit) Regulations 2019⁽⁴⁾;

“EU instrument” has the meaning provided in schedule 1 of the Interpretation Act 1978⁽⁵⁾;

“other proceedings” means criminal proceedings, including bills of advocation and bills of suspension, which are not solemn proceedings or summary proceedings to which regulation 3 of the 2019 Regulations applies;

“solemn proceedings” means any such proceedings to which regulation 3 of the 2019 Regulations applies;

“summary proceedings” means any such proceedings to which regulation 3 of the 2019 Regulations applies;

“TFEU” means the Treaty on the Functioning of the European Union including the Protocols thereto⁽⁶⁾;

“the relevant UK authorities” has the meaning provided by regulation 2 of the 2019 Regulations.

(2) This Chapter applies to challenges to the validity of an EU instrument, as provided for by regulation 3 of the 2019 Regulations.

Declarations from the court in solemn or summary proceedings that an EU instrument was invalid – notices

70.2.—(1) This rule applies to solemn and summary proceedings.

(2) Where a party to solemn or summary proceedings seeks a declaration from the court that an EU instrument was invalid on any of the grounds set out in the second paragraph of Article 263 TFEU as it has effect immediately before exit day, or the court is considering whether to make such a declaration at its own instance in the proceedings—

(a) notice in Form 70.2-A is to be given to the relevant UK authorities no later than 21 days, or such other period as the court may direct, before the date on which the declaration is to be made—

(i) by the party seeking the declaration; or

(ii) by the clerk of court,

as the case may be; and

(b) where notice is given by the party seeking the declaration, the party must lodge a certificate of notification with the court.

(4) S.I. 2019/673.

(5) 1978 c.30. Schedule 1 of the Interpretation Act 1978 defines words and expressions, as amended by, and prospectively relevantly amended by, the European Union (Withdrawal) Act 2018 (c.16), schedule 8, paragraph 22.

(6) OJ C 202, 7.6.2016, p.1-388.

Relevant UK authorities joining solemn or summary proceedings

70.3. Where any of the relevant UK authorities wish to be joined as a party to solemn or summary proceedings they must give notice to that effect in Form 70.3-A to the clerk of court and must serve a copy of the notice on all other parties in the proceedings.

Declarations from the court in other proceedings that an EU instrument was invalid – notices

70.4.—(1) This rule applies to other proceedings.

(2) Where a party to other proceedings seeks a declaration from the court that an EU instrument was invalid on any of the grounds set out in the second paragraph of Article 263 TFEU as it has effect immediately before exit day, or the court is considering whether to make such a declaration at its own instance in the proceedings—

- (a) the issue must be raised as a point of law in the pleadings;
- (b) notice in Form 70.2-A is to be given to the relevant UK authorities no later than 21 days, or such other period as the court may direct, before the date on which the declaration is to be made—
 - (i) by the party seeking the declaration; or
 - (ii) by the clerk of court,as the case may be; and
- (c) where notice is given by the party seeking the declaration, the party must lodge a certificate of notification with the court.

Relevant UK authorities joining other proceedings

70.5. Where any of the relevant UK authorities wish to be joined as a party to other proceedings they must give notice to that effect in Form 70.3-A to the clerk of court and must serve a copy of the notice on all other parties in the proceedings.”

(3) In the Appendix (forms), after Form 69.3 (form of note of appeal against the making of, or refusal to make, an order under section 23 of the Immigration Act 2016) insert Forms 70.2-A and 70.3-A set out in the schedule of this Act of Adjournal.

Edinburgh
21st October 2019

CJM SUTHERLAND
Lord Justice General
I.P.D.

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SCHEDULE

Paragraph 2(3)

Rules 70.2(2)(a) and 70.4(2)(b)

Form 70.2-A

Form of notice to relevant UK authorities under regulation 5 of the Challenges to the Validity of EU Instruments (EU Exit) Regulations 2019

IN THE HIGH COURT OF JUSTICIARY

[or IN THE SHERIFF APPEAL COURT]

[or

SHERIFFDOM OF *(insert name of sheriffdom)*

AT *(insert name of sheriff court)*]

[or

UNTO THE JUSTICES in the JUSTICE OF THE PEACE COURT OF *(name of district)*

in

HER MAJESTY’S ADVOCATE

[or

PROCURATOR FISCAL at *(place)*]

against

[A.B.] *(address)* [or presently a prisoner in the Prison of *(place)*]

Date: *(date of posting or other method of service)*

To: *(specify the relevant UK authority)*

TAKE NOTICE

That the court is considering whether or not to [or: That *(specify party)* is seeking that the court make a declaration under regulation 4 of the Challenges to Validity of EU Instruments (EU Exit) Regulations 2019 that *(specify the EU instrument which is the subject of the proposed declaration)*

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If you wish to become a party to the proceedings, you should notify the clerk of court in Form 70.3-A.

(Signed)

Clerk of Court

[or Solicitor [or Agent] for (specify)]

(Place and

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Rules 70.3 and 70.5

Form 70.3-A

Form of notice to court under regulation 6 of the Challenges to Validity of Instruments (EU Exit) Regulations 2019

IN THE HIGH COURT OF JUSTICIARY

[*or* IN THE SHERIFF APPEAL COURT]

[*or*

SHERIFFDOM OF (*insert name of sheriffdom*)

AT (*insert name of sheriff court*)]

[*or*

UNTO THE JUSTICES in the JUSTICE OF THE PEACE COURT OF (*name of district*)

in

HER MAJESTY'S ADVOCATE

[*or*

PROCURATOR FISCAL at (*place*)]

against

[A.B.] (*address*) [*or* presently a prisoner in the Prison of (*place*)]

To the Clerk of Court

The (*specify the relevant UK authority or person nominated by a Minister of the Crown*) intend to join as a party to the proceedings.⁶

(Signed)

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EXPLANATORY NOTE

(This note is not part of the Act of Adjournal)

This Act of Adjournal amends the Criminal Procedure Rules 1996 by inserting a new Chapter 70 which provides court rules, and accompanying forms, which are required in consequence of the Challenge to Validity of EU Instruments (EU Exit) Regulations 2019 (S.I. 2019/673).