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SCOTTISH STATUTORY INSTRUMENTS

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**2019 No. 329**

**SHERIFF APPEAL COURT  
SHERIFF COURT**

**Act of Sederunt (Challenges to Validity of EU Instruments  
(EU Exit) in the Sheriff Appeal Court and Sheriff Court) 2019**

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

In accordance with section 4 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013<sup>(1)</sup>, the Court of Session has approved draft rules submitted to it by the Scottish Civil Justice Council.

The Court of Session therefore makes this Act of Sederunt under the powers conferred by section 104(1) of the Courts Reform (Scotland) Act 2014<sup>(2)</sup> and all other powers enabling it to do so.

**Citation and commencement etc.**

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Challenges to Validity of EU Instruments (EU Exit) in the Sheriff Appeal Court and Sheriff Court) 2019.

(2) It comes into force on exit day.

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

**Interpretation**

2.—(1) In this Act of Sederunt—

“the 2019 Regulations” means the Challenges to Validity of EU Instruments (EU Exit) Regulations 2019<sup>(3)</sup>;

“the clerk of court” means the sheriff clerk or, as regards proceedings before the Sheriff Appeal Court, the Clerk of the Sheriff Appeal Court;

“the court” means the Sheriff Appeal Court or the sheriff, as the case may be;

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(1) 2013 asp 3. Section 4 was amended by the Courts Reform (Scotland) Act 2014 (asp 18), schedule 5, paragraph 31(3) and by the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (asp 2), schedule 1, paragraph 1(4).

(2) 2014 asp 18.

(3) S.I. 2019/673.

“EU instrument” has the meaning provided in schedule 1 of the Interpretation Act 1978(4);  
“TFEU” means the Treaty on the Functioning of the European Union including the Protocols thereto(5);  
“the proceedings” means any proceedings to which regulation 3 of the 2019 Regulations applies;  
“the relevant UK authorities” has the meaning provided by regulation 2 of the 2019 Regulations.

(2) A reference in this Act of Sederunt to a Form is a reference to that Form in the schedule.

### **Application**

3. This Act of Sederunt applies to challenges to the validity of an EU instrument, as provided for by regulation 3 of the 2019 Regulations, in proceedings before the court.

### **Declarations from the court that an EU instrument was invalid – notices**

4.—(1) Where a party to the 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 1 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 in process.

(2) Where any of the relevant UK authorities wish to be joined as a party to the proceedings they must serve notice in Form 2 to that effect on the clerk of court and are to serve a copy of the notice on all other parties in the proceedings.

Edinburgh  
21st October 2019

*CJM SUTHERLAND*  
Lord President  
I.P.D.

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(4) 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.

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

SCHEDULE

Paragraph 2(2)

Paragraph 4(1)(a)

FORM 1

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

IN THE SHERIFF APPEAL COURT [*or* SHERIFFDOM OF (insert name of sheriffdom)]

AT (*insert place of sheriff court*)

*in the cause*

[A.B.], (*insert name and address*)

Pursuer

against

[C.D.], (*insert name and address*)

Defender

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*)  
was invalid on the following grounds:

(*set out the grounds in summary*)

If you wish to become a party to the proceedings, you should notify the clerk of court in Form 2.

(Signed)

Clerk of the Sheriff Appeal Court [*or* Sheriff  
Clerk]

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

**Status:** This is the original version (as it was originally made).

Paragraph 4(2)

## FORM 2

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

IN THE SHERIFF APPEAL COURT [*or SHERIFFDOM OF (insert name of sheriffdom)*]

AT [*insert place of sheriff court*]

*in the cause*

[A.B.], [*insert name and address*]

Pursuer

against

[C.D.], [*insert name and address*]

Defender

To the Clerk of the Sheriff Appeal Court [*or sheriff clerk*]

The [*specify the relevant UK authority or person nominated by a Minister of the Crown*] intends to join as a party to the proceedings.

(Signed)

Solicitor for [*specify the relevant UK authority or person nominated by a Minister of the Crown*]

(Address)

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### **EXPLANATORY NOTE**

*(This note is not part of the Act of Sederunt)*

This Act of Sederunt makes provision for procedures to be followed in civil proceedings in the Sheriff Appeal Court and before the sheriff, and prescribes court forms, in consequence of the Challenges to Validity of EU Instruments (EU Exit) Regulations 2019 (S.I. 2019/673).

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