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SCOTTISH STATUTORY INSTRUMENTS

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**2019 No. 328**

**COURT OF SESSION**

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

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

The Court of Session makes this Act of Sederunt under the powers conferred by section 103(1) of the Courts Reform (Scotland) Act 2014(1) 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 Court of Session) 2019.

(2) It comes into force on exit day.

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

**Amendment of the Rules of the Court of Session 1994**

2.—(1) The Rules of the Court of Session 1994(2) are amended in accordance with this paragraph.

(2) After Chapter 107 (Counter-Terrorism and Security Act 2015 – Temporary Exclusion Orders)(3), insert—

**“CHAPTER 108**

**CHALLENGES TO VALIDITY OF EU INSTRUMENTS (EU EXIT)**

**Interpretation and application**

**108.1.—(1)** In this Chapter—

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(1) 2014 asp 18.

(2) The Rules of the Court of Session 1994 are in schedule 2 of the Act of Sederunt (Rules of the Court of Session 1994) 1994 (S.I. 1994/1443), last amended by S.S.I. 2019/293.

(3) Chapter 107 was inserted by S.S.I. 2017/26.

“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);

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

“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) 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 that an EU instrument was invalid – notices**

**108.2.** 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 108.2-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 in process.

**108.3.** Where any of the relevant UK authorities wish to be joined as a party to the proceedings they must serve notice in Form 108.3-A to that effect on the Deputy Principal Clerk of Session and must serve a copy of the notice on all other parties in the proceedings.”.

(3) In the appendix (forms), after Form 106.12 (form of certificate of sending of documents to chief constable)(7), insert Forms 108.2-A and 108.3-A set out in the schedule of this Act of Sederunt.

Edinburgh  
21st October 2019

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

(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](#).

(7) Form 106.12 was inserted by [S.S.I. 2014/371](#).

SCHEDULE

Paragraph 2(3)

Rule 108.2(a)

FORM 108.2-A

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

IN THE COURT OF SESSION

*in causa*

[A.B.], (*designation and address*)

Pursuer [*or* Petitioner]

against

[C.D.], (*designation and address*)

Defender [*or* Respondent]

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 Deputy Principal Clerk of Session in Form 108.3-A.

(Signed)

Deputy Principal Clerk of Session

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

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

Rule 108.3

**FORM 108.3-A**

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

IN THE COURT OF SESSION

*in causa*

[A.B.], (*designation and address*)

Pursuer [*or* Petitioner]

against

[C.D.], (*designation and address*)

Defender [*or* Respondent]

To the Deputy Principal Clerk of Session

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 amends the Rules of the Court of Session 1994 by inserting new Chapter 108 which provides court rules, and accompanying forms, which are required in consequence of the Challenges to Validity of EU Instruments (EU Exit) Regulations 2019 (S.I. 2019/673).

