

SCOTTISH STATUTORY INSTRUMENTS

2019 No. 330

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

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.

Commencement Information

II Para. 1 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [para. 1\(2\)](#)

Amendment of the Criminal Procedure Rules 1996

2.—(1) The Criminal Procedure Rules 1996 ^{M1} are amended in accordance with this paragraph.

(2) After Chapter 69 (Labour Market Enforcement Orders) ^{M2} insert—

“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 ^{M3};

“EU instrument” has the meaning provided in schedule 1 of the Interpretation Act 1978 ^{M4};

“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 ^{M5};

“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 [F¹IP completion 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.

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 [F¹IP completion 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.

Textual Amendments

F1 Words in para. 2(2) substituted (31.12.2020 immediately before IP completion day) by Act of Adjournal (Challenges to Validity of EU Instruments (EU Exit)) (Amendment) 2020 (S.S.I. 2020/470), paras. 1(2), **2(2)**

Commencement Information

I2 Para. 2 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, **Sch. 5 para. 1(1)**), see para. 1(2)

Marginal Citations

- M1** 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.
- M2** Chapter 69 was inserted by S.S.I. 2019/139.
- M3** S.I. 2019/673.
- M4** 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**.
- M5** OJ C 202, 7.6.2016, p.1-388.

I.P.D.
Edinburgh

CJM SUTHERLAND
Lord Justice General

Changes to legislation:

There are currently no known outstanding effects for the Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (Challenges to Validity of EU Instruments (EU Exit)) 2019.