

CHAPTER 108
CHALLENGES TO VALIDITY OF EU INSTRUMENTS (EU EXIT)

Interpretation and application

108.1.—(1) In this Chapter—

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

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

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

“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 IP completion 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.

^(a) S.I. 2019/673.

^(b) 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.

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