Draft Regulations laid before Parliament under paragraph 9(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2019 No. 0000

EXITING THE EUROPEAN UNION

EUROPEAN UNION

The Challenges to Validity of EU Instruments (EU Exit) Regulations 2019

Made - - - - ***

Coming into force in accordance with regulation 1

The Secretary of State makes these Regulations in exercise of the powers conferred by paragraph 1(2)(b) of Schedule 1 and paragraph 21(b) of Schedule 7 to the European Union (Withdrawal) Act 2018(**a**).

In accordance with paragraph 9(1) of Schedule 7 to that Act, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

Citation, commencement and interpretation

1. These Regulations may be cited as the Challenges to Validity of EU Instruments (EU Exit) Regulations 2019 and come into force on exit day(**b**).

2. In these Regulations—

"TFEU" means the Treaty on the Functioning of the European Union including the Protocols thereto;

"the relevant UK authorities" means a Minister of the Crown (or a person nominated by him), the Scottish Ministers, a Northern Ireland department, and the Welsh Ministers;

"Minister of the Crown" has the same meaning as in the Ministers of the Crown Act 1975(**c**).

Challenges which may continue relating to the validity of EU instruments

3.—(1) Paragraph 1(1) of Schedule 1 to European Union (Withdrawal) Act 2018 does not apply in relation to a challenge to retained EU law where—

(a) the challenge is on the basis that, immediately before exit day, 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; and

(**a**) 2018 c.16.
(**b**) See section 20(1) of the European Union (Withdrawal) Act 2018.
(**c**) 1974 c.26: see section 8(1).

(b) the challenge relates to proceedings begun, but not finally decided, in a court or tribunal in the United Kingdom before exit day.

(2) A challenge falls with paragraph (1) whether or not, before exit day, the court or tribunal has made a preliminary reference to the European Court under Article 267 TFEU in relation to that challenge.

Remedies

4.—(1) In any proceedings to which regulation 3 applies, where the court or tribunal finds an EU instrument invalid on any of the grounds set out in the second paragraph of Article 263 TFEU, it may declare it void.

(2) A declaration made under paragraph (1) has the same effect as if the EU Instrument had been declared void by the European Court under Article 264 TFEU in a case decided before exit day.

(3) The court or tribunal may, if it considers this necessary, state which of the effects of the EU instrument which it has declared void shall be considered as definitive.

Notice to the relevant UK authorities

5.—(1) The court or tribunal may not make a declaration under regulation 4 unless notice of the proceedings has been given to all the relevant UK authorities in accordance with paragraphs (2) to (6).

(2) The notice must be given to the relevant UK authorities at least 21 days, or such other period as the court or tribunal directs, before the date on which the declaration is made.

(3) The court or tribunal may at any time in the proceedings decide whether notice should be given to the relevant UK authorities.

(4) The notice must be given in the form directed by the court or tribunal.

(5) The notice given to a Minister of the Crown must be served on the person named in the list published under section 17 of the Crown Proceedings Act 1947(**a**).

(6) The notice must be served on all the parties.

Right of the relevant UK authorities to intervene

6.—(1) In any proceedings to which regulation 3 applies, the relevant UK authorities are each entitled, on giving notice of their intention to be joined in accordance with paragraphs (2) to (4), to be joined as a party to the proceedings.

(2) Notice may be given at any time during the proceedings.

(3) Unless the court or tribunal orders otherwise, the notice must be given in writing to the court and to all the parties.

(4) Where a Minister of the Crown has nominated a person to be joined as a party, the notice must be accompanied by the nomination in writing, signed on behalf of the Minister.

Name
Parliamentary Under Secretary of State
Department for Exiting the European Union

Date

(**a**) 1947 c.44.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the power conferred by paragraph 1(2)(b) of Schedule 1 to the European Union (Withdrawal) Act 2018 ("EUWA").

These Regulations make provision about the exceptions to the saving and incorporation of EU law set out in paragraph 1 of Schedule 1 to EUWA, which provides that, on or after exit day, no challenge can be brought in the UK courts to retained EU law on the basis that immediately before exit day, an EU instrument (for example, an EU regulation or decision) was invalid.

Regulation 3 provides that this exception for claims in respect of validity will not apply in respect of a certain class of claims. They must be based on whether an EU instrument was invalid immediately before exit day under the grounds in Article 263 TFEU and relate to proceedings which have begun before exit but are not yet decided.

Regulation 4(1) gives jurisdiction to courts and tribunals in the UK to declare an EU instrument invalid in these cases.

Regulation 5 makes provision for notice to be given to a Minister of the Crown or the devolved administrations about any proceedings under these Regulations. Regulation 6 allows for a Minister of the Crown or the devolved administrations to be able to intervene in proceedings under these Regulations.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen.

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