

Subsidiary Legislation made under para.1(2)(b) of Sch.1 & para. 1(b) of Sch.3.

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

LN.2019/129

Commencement

1.1.2021

ARRANGEMENT OF REGULATIONS.

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2019-01

European Union (Withdrawal)

2019/129

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

In exercise of the powers conferred on the Minister by paragraph 1(2)(b) of Schedule 1 and paragraph 1(b) of Schedule 3 of the European Union (Withdrawal) Act 2019, the Minister has made these Regulations-

Title.

1. These Regulations may be cited as the Challenges to Validity of EU Instruments (EU Exit) Regulations 2019.

Commencement.

2. These Regulations come into operation on exit day.

Interpretation.

3. In these Regulations-

“TFEU” means the Treaty on the Functioning of the European Union including the Protocols thereto.

Challenges which may be brought relating to the validity of EU instruments.

4.(1) Paragraph 1(1) of Schedule 1 to the European Union (Withdrawal) Act 2019 does not apply in relation to a challenge to retained EU law where-

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

(b) the challenge relates to proceedings begun, but not finally decided, in a court or tribunal in Gibraltar before IP completion day.

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

Remedies.

5.(1) In any proceedings to which regulation 4 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 subregulation (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 IP completion 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 Attorney General.

6.(1) The court or tribunal may not make a declaration under regulation 5 unless notice of the proceedings has been given to the Attorney General in accordance with subregulations (2) to (5).

(2) The notice must be given to the Attorney General 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 Attorney General.

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

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

Right of the Crown to Intervene.

7.(1) In any proceedings to which regulation 4 applies, the Attorney General, acting on behalf of the Crown, is entitled, on giving notice of the intention to be joined in accordance with subregulation (2) to (3), 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.