
SCOTTISH STATUTORY INSTRUMENTS

2024 No. 195

**COURT OF SESSION
SHERIFF APPEAL COURT**

**Act of Sederunt (Rules of the Court of Session 1994
and Sheriff Appeal Court Rules 2021 Amendment)
(United Nations Convention on the Rights of the
Child (Incorporation) (Scotland) Act 2024) 2024**

<i>Made</i>	- - - -	<i>27th June 2024</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>28th June 2024</i>
<i>Coming into force</i>	- -	<i>16th July 2024</i>

In accordance with section 4 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013⁽¹⁾, the Court of Session has approved draft rules submitted to it by the Scottish Civil Justice Council with such modifications as it thinks appropriate.

The Court of Session therefore makes this Act of Sederunt under the powers conferred by sections 103(1) and 104(1) of the Courts Reform (Scotland) Act 2014⁽²⁾, section 44(2) and (3) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024⁽³⁾ 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 (Rules of the Court of Session 1994 and Sheriff Appeal Court Rules 2021 Amendment) (United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024) 2024.

(2) It comes into force on 16th July 2024.

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

(1) 2013 asp 3. Section 4 was amended by the Courts Reform (Scotland) Act 2014 (asp 18), schedule 5, paragraph 31(3) and by the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (asp 2), schedule 1, paragraph 1(4).
(2) 2014 asp 18.
(3) 2024 asp 1.

Amendment of the Rules of the Court of Session 1994

- 2.—(1) The Rules of the Court of Session 1994⁽⁴⁾ are amended in accordance with this paragraph.
(2) For Chapter 25A (devolution issues)⁽⁵⁾ substitute—

“CHAPTER 25A

COMPATIBILITY QUESTIONS AND DEVOLUTION ISSUES

Interpretation of this Chapter

25A.1. In this Chapter—

“the 2024 Act” means the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024;

“compatibility question” has the meaning given by section 31(1) of the 2024 Act;

“devolution issue” means a devolution issue within the meaning of—

- (a) Schedule 6 of the Scotland Act 1998;
- (b) Schedule 10 of the Northern Ireland Act 1998; or
- (c) Schedule 9 of the Government of Wales Act 2006,

and any reference to Schedule 6, Schedule 10 or Schedule 9 is a reference to that Schedule in that Act;

“relevant authority” means—

- (a) in respect of a compatibility question, the Commissioner for Children and Young People in Scotland, the Lord Advocate and the Scottish Commission for Human Rights;
- (b) in any other case, the Advocate General for Scotland and—
 - (i) in the case of a devolution issue within the meaning of Schedule 6, the Lord Advocate;
 - (ii) in the case of a devolution issue within the meaning of Schedule 10, the Attorney General for Northern Ireland, and the First Minister and deputy First Minister acting jointly;
 - (iii) in the case of a devolution issue within the meaning of Schedule 9, the Counsel General to the Welsh Government.

Proceedings where compatibility question or devolution issue raised in principal writ

25A.2. Where any summons, petition or other principal writ contains an averment or conclusion which raises a compatibility question or a devolution issue, the principal writ must be served on the relevant authority, unless it has initiated the proceedings.

⁽⁴⁾ 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. 2024/84.

⁽⁵⁾ Chapter 25A was inserted by S.I. 1999/1345 and last amended by the Wales Act 2014 (c. 29), section 4(4)(a).

Time for raising compatibility question or devolution issue

25A.3.—(1) It is not competent for a party to any proceedings to raise a compatibility question or devolution issue otherwise than in the pleadings before any evidence is led, unless the court, on cause shown, otherwise determines.

(2) Where the court determines that a compatibility question or devolution issue may be raised as mentioned in paragraph (1), it is to make such orders as to the procedure to be followed as appear to it to be appropriate and, in particular, is to make such orders—

- (a) as are necessary to ensure that intimation of the compatibility question is given in writing to the relevant authority for the purposes of section 34(1) of the 2024 Act;
- (b) as are necessary to ensure that intimation of the devolution issue is given in writing to the relevant authority for the purposes of paragraph 5 of Schedule 6, or as the case may be, paragraph 23 of Schedule 10 or paragraph 14(1) of Schedule 9,

and as to the time in which any step is to be taken by any party in the proceedings.

Specification of compatibility question or devolution issue

25A.4.—(1) Any party raising a compatibility question must specify—

- (a) where the party initiates the action, in the principal writ;
- (b) where a counterclaim is lodged, in the counterclaim; or
- (c) in any other case, in the defences or answers,

the facts and circumstances and contentions of law on the basis of which it is alleged that the compatibility question arises in sufficient detail to enable the court to determine, for the purposes of section 31(3) of the 2024 Act, whether a compatibility question arises in the proceedings.

(2) Any party raising a devolution issue must specify—

- (a) where the party initiates the action, in the principal writ;
- (b) where a counterclaim is lodged, in the counterclaim; or
- (c) in any other case, in the defences or answers,

the facts and circumstances and contentions of law on the basis of which it is alleged that the devolution issue arises in sufficient detail to enable the court to determine, for the purposes of paragraph 2 of Schedule 6 or, as the case may be, of Schedule 10 or Schedule 9, whether a devolution issue arises in the proceedings.

(3) Where a party wishes to raise a compatibility question or devolution issue after the lodging of any writ mentioned in paragraph (1) or (2) respectively, the party must do so either by adjustment or amendment so as to specify in the party's pleadings the matters in that respective paragraph.

Intimation

25A.5.—(1) Intimation of—

- (a) a compatibility question in pursuance of section 34(1) of the 2024 Act;
- (b) a devolution issue in pursuance of paragraph 5 of Schedule 6 or, as the case may be, paragraph 23 of Schedule 10 or paragraph 14(1) of Schedule 9,

must be given to the relevant authority (unless already a party to the proceedings or where it has been served with the principal writ in pursuance of rule 25A.2) in accordance with this rule.

(2) Where the compatibility question or devolution issue is raised in the principal writ, service of the principal writ on the relevant authority is to be treated as such intimation.

(3) In any other case, the party raising the compatibility question or devolution issue must, as soon as practicable, enrol a motion craving a warrant to intimate the compatibility question or devolution issue to the relevant authority and on hearing the motion, where it appears to the court that a compatibility question or devolution issue arises, the court is to order such intimation in Form 25A.5.

(4) The intimation of a compatibility question or a devolution issue is to specify 14 days, or such other period as the court on cause shown may specify, as the period within which a relevant authority may give notice to the Deputy Principal Clerk of its intention to take part as a party in the proceedings as mentioned in, respectively—

- (a) section 34(2) of the 2024 Act;
- (b) paragraph 6 of Schedule 6 or, as the case may be, paragraph 24 of Schedule 10 or paragraph 14(2) of Schedule 9.

Intimation of reclaiming motion or application to the *nobile officium* of the court

25A.6. Where, after determination at first instance of any proceedings in which a compatibility question or devolution issue has been raised, a party to those proceedings—

- (a) marks a reclaiming motion under rule 38.6; or
- (b) makes an application to the *nobile officium* of the court under rule 14.3,

that party must, unless the relevant authority is already party to the proceedings, at the same time intimate the motion to, or seek leave to serve the petition on, the relevant authority together with a notice in Form 25A.6.

Response to intimation

25A.7.—(1) Where a relevant authority gives notice as mentioned in rule 25A.5(4), it must, not later than 7 days after the date of such notice, lodge a minute of its written submissions in respect of the compatibility question or devolution issue together with conclusions and pleas in law as appropriate.

(2) Where a relevant authority does not take part as a party in the proceedings at first instance the court may allow it to take part as a party in any subsequent appeal, reclaiming motion or reference to a higher court.

(3) The minute lodged in accordance with paragraph (1) must be intimated to all other parties in the proceedings.

Reference to Inner House

25A.8.—(1) Where a compatibility question or devolution issue arises in any proceedings before the Lord Ordinary, any reference of the compatibility question or devolution issue to the Inner House as mentioned in—

- (a) section 35(1) of the 2024 Act;
- (b) paragraph 7 of Schedule 6 or, as the case may be, paragraph 25 of Schedule 10 or paragraph 15 of Schedule 9,

is to be by means of a report in accordance with Chapter 34 of these Rules.

(2) Where, in any proceedings before the Lord Ordinary, reference of a compatibility question or devolution issue is made to the Inner House, the Deputy Principal Clerk must,

unless the relevant authority is already party to the proceedings, not later than 7 days after the reference has been made, give notice of the reference in Form 25A.8 to the relevant authority.

Reference to Supreme Court

25A.9.—(1) Where the court—

- (a) decides in accordance with section 35(3) of the 2024 Act; or
- (b) is required as mentioned in section 36 of the 2024 Act,

to refer a compatibility question to the Supreme Court, it is to pronounce an interlocutor giving directions to the parties about the manner and time in which the reference is to be drafted and adjusted.

(2) Where the court—

- (a) decides in accordance with paragraph 10 of Schedule 6 or, as the case may be, paragraph 28 of Schedule 10 or paragraph 18 of Schedule 9; or
- (b) is required as mentioned in paragraph 33 of Schedule 6 or, as the case may be, paragraph 33 of Schedule 10 or paragraph 29(1) of Schedule 9,

to refer a devolution issue to the Supreme Court, it is to pronounce an interlocutor giving directions to the parties about the manner and time in which the reference is to be drafted and adjusted.

(3) When the reference has been drafted at the sight of the court, the court is to make and sign the reference.

(4) The reference is to include such matter as may be required by Practice Direction 10 of the Supreme Court, and is to have annexed to it the interlocutor making the reference.

(5) Service of the reference in accordance with Practice Direction 10 of the Supreme Court may be effected by the Deputy Principal Clerk by first class recorded delivery post.

Sist of cause on reference to Supreme Court

25A.10.—(1) Subject to paragraph (2), on a reference being made to the Supreme Court as mentioned in rule 25A.9, the cause is, unless the court when making the reference otherwise orders, to be sisted until the Supreme Court has determined the compatibility question or devolution issue.

(2) The court may recall a sist made under paragraph (1) for the purpose of making any interim order which a due regard to the interests of the parties may require.

Transmission of reference

25A.11.—(1) The reference must be transmitted by the Deputy Principal Clerk to the Registrar of the Supreme Court.

(2) Unless the court otherwise directs, the reference must not be sent to the Registrar of the Supreme Court where a reclaiming motion or an appeal against the making of the reference is pending.

(3) For the purpose of paragraph (2), a reclaiming motion or an appeal is to be treated as pending—

- (a) until the expiry of the time for marking the reclaiming motion or appeal; or
- (b) where a reclaiming motion or an appeal has been made, until it has been determined.

Appeals to the Supreme Court

25A.12.—(1) Where an appeal to the Supreme Court is made—

- (a) under section 35(4) of the 2024 Act;
- (b) with permission under section 35(5)(a) or (b) of the 2024 Act;
- (c) under paragraph 12 of Schedule 6 or, as the case may be, paragraph 30 of Schedule 10 or paragraph 20 of Schedule 9; or
- (d) with leave or special leave, under paragraph 13(b) of Schedule 6 or, as the case may be, paragraph 31(b) of Schedule 10 or paragraph 21(b) of Schedule 9,

the court from whose determination the appeal is made may make such orders as it thinks fit, having regard to the interests of the parties to the cause, for the purpose of regulating the proceedings pending the determination of the appeal by the Supreme Court, including orders relating to interim possession, execution and expenses already incurred.

(2) Where the determination of an appeal by the Supreme Court does not dispose of the whole cause, the court against whose determination the appeal was made is to order such further procedure as is necessary to enable it to dispose of the whole cause.

Orders mitigating the effect of certain decisions

25A.13.—(1) In any proceedings where the court is considering making an order under section 25(5) of the 2024 Act, the court is to order intimation of the fact to be made by the Deputy Principal Clerk to the Lord Advocate (unless the Lord Advocate is a party to the proceedings).

(2) Intimation as mentioned in paragraph (1) is to—

- (a) be made forthwith in Form 25A.13A by first class recorded delivery post; and
- (b) specify 7 days, or such other period as the court thinks fit, as the period within which the Lord Advocate may give notice of the Lord Advocate’s intention to take part as a party in the proceedings.

(3) In any proceedings where the court is considering making an order under—

- (a) section 102 of the Scotland Act 1998;
- (b) section 81 of the Northern Ireland Act 1998; or
- (c) section 153 of the Government of Wales Act 2006,

the court is to order intimation of the fact to be made by the Deputy Principal Clerk to every person to whom intimation is required to be given by that section.

(4) Intimation as mentioned in paragraph (3) is to—

- (a) be made forthwith in Form 25A.13B by first class recorded delivery post; and
- (b) specify 7 days, or such other period as the court thinks fit, as the period within which a person may give notice of their intention to take part in the proceedings.”.

(3) In Chapter 82 (the Human Rights Act 1998)(6)—

- (a) for the Chapter heading substitute “**INCOMPATIBILITY DECLARATIONS AND INCOMPATIBILITY AND STRIKE DOWN DECLARATORS**”;
- (b) for rule 82.1 (application and interpretation) substitute—

(6) Chapter 82 was inserted by S.S.I. 2000/316. It was erroneously over-written by a second Chapter 82 on a different subject-matter by S.S.I. 2001/92, which was corrected by S.S.I. 2001/305.

“Application and interpretation

82.1.—(1) This Chapter deals with various matters relating to—

- (a) the Human Rights Act 1998;
- (b) the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024.

(2) In this Chapter—

- “the 1998 Act” means the Human Rights Act 1998;
- “the 2024 Act” means the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024;
- “declaration of incompatibility” has the meaning given by section 4 of the 1998 Act;
- “incompatibility declarator” has the meaning given by section 26(2) of the 2024 Act;
- “strike down declarator” has the meaning given by section 25(2) of the 2024 Act.”;

(c) in rule 82.3 (declaration of incompatibility)(7)—

- (i) for the heading substitute **“Declarations and declarators”**;
- (ii) in paragraph (1), after “declaration of incompatibility” insert “, incompatibility declarator or strike down declarator”;
- (iii) in paragraph (1), after “declaration”, other than where it first occurs, insert “or declarator”;
- (iv) after paragraph (2) insert—

“(3) Where any of—

- (a) the Commissioner for Children and Young People in Scotland;
- (b) the Lord Advocate;
- (c) the Scottish Commission for Human Rights,

wishes to take part as a party to proceedings in relation to which it is entitled to receive intimation under section 27(1) of the 2024 Act, it must serve notice in Form 82.3-B to that effect on the Deputy Principal Clerk and must serve a copy of the notice on all other parties to the proceedings.”;

(d) in rule 82.4, after “rule 82.3(2)” insert “or (3)”.

(4) In the appendix (forms)(8)—

(a) in Form 25A.5 (form of intimation to a relevant authority of a devolution issue raised in civil proceedings)(9)—

- (i) in the title, before **“devolution issue”** insert **“compatibility question or”**;
- (ii) in paragraphs 1 and 2, for “devolution issue” where it appears substitute “compatibility question [*or* devolution issue]”;

(b) Form 25A.5A (form of notice to a relevant authority of reclaiming motion [*or* application to the *nobile officium* of the court] in proceedings in which a devolution issue has been raised)(10) is renumbered Form 25A.6;

(c) in Form 25A.6—

(7) Rule 82.3 was amended by [S.S.I. 2006/83](#).

(8) The appendix was last amended by [S.S.I. 2023/196](#).

(9) Form 25A.5 was inserted by [S.I. 1999/1345](#).

(10) Forms 25A.5A, 25A.7 and 25A.12 were inserted by [S.S.I. 2007/360](#).

- (i) in the title, for “**devolution issue**” substitute “**compatibility question [or devolution issue]**”;
 - (ii) for “Rule 25A.5A” substitute “Rule 25A.6”;
 - (iii) for “devolution issue” where it appears substitute “compatibility question [or devolution issue]”;
- (d) Form 25A.7 (form of notice to a relevant authority of the reference of a devolution issue to the Inner House) is renumbered Form 25A.8.
- (e) in Form 25A.8—
- (i) in the title, for “**the reference of a devolution issue**” substitute “**a reference**”;
 - (ii) for “Rule 25A.7(2)” substitute “Rule 25A.8(2)”;
 - (iii) omit “a devolution issue”;
 - (iv) after “Inner House” insert “a compatibility question under section 35(1) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 [or a devolution issue]”;
 - (v) after “Scotland Act 1998” insert “]”;
- (f) Form 25A.12 (form of intimation to a relevant authority that the court is considering making an order under [section 102 of the Scotland Act 1998/section 81 of the Northern Ireland Act 1998/section 153 of the Government of Wales Act 2006])(**11**) is renumbered Form 25A.13B;
- (g) in Form 25A.13B, for “Rule 25A.12” substitute “Rule 25A.13(4)(a)”;
- (h) before Form 25A.13B insert Form 25A.13A (form of intimation to the Lord Advocate that the court is considering making an order suspending the effect of a strike down declarator) as set out in the schedule of this Act of Sederunt.
- (i) in Form 82.3-A (form of notice to Crown under section 5(1) of the Human Rights Act 1998 Act)(**12**)—
- (i) for the title substitute “**Form of notice in respect of declarations or declarators**”;
 - (ii) after “Human Rights Act 1998” insert “[or an incompatibility declarator under section 26(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024] [or a strike down declarator under section 25(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024]”;
 - (iii) after “*proposed declaration*” insert “*or declarator*”;
 - (iv) after “*Convention right*” insert “*under the Human Rights Act 1998 or the UNCRC requirements under the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024*”;
- (j) in Form 82.3-B (form of notice to court under section 5(2) of the Human Rights Act 1998 Act)(**13**)—
- (i) for the title substitute “**Form of notice to court to join or take part in proceedings**”;
 - (ii) after “join” insert “[or take part]”;

(11) Form 25A.12 was amended by [S.S.I. 2007/360](#).

(12) Forms 82.3-A was inserted by [S.S.I. 2000/316](#), last amended by [S.S.I. 2006/83](#).

(13) Form 82.3-B was inserted by [S.S.I. 2000/316](#) and amended by [S.S.I. 2004/52](#).

- (iii) after “proceedings” insert “under section 5(2) of the Human Rights Act 1998 [or section 27(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024]”;
- (k) in Form 82.4 (form of minute under rule 82.4)(14)—
 - (i) in paragraph 1, after “1998” insert “[or section 27(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024]”;
 - (ii) in paragraph 2, after “incompatibility” insert “[or incompatibility declarator] [or strike down declarator]”.

Amendment of the Sheriff Appeal Court Rules 2021

3.—(1) The Act of Sederunt (Sheriff Appeal Court Rules) 2021(15) is amended in accordance with this paragraph.

(2) For Chapter 22 (devolution issues) substitute—

“CHAPTER 22

COMPATIBILITY QUESTIONS AND DEVOLUTION ISSUES

Interpretation

22.1. In this Chapter—

“the 2024 Act” means the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024;

“compatibility question” has the meaning given by section 31(1) of the 2024 Act;

“devolution issue” means a devolution issue under—

- (a) Schedule 6 of the Scotland Act 1998;
- (b) Schedule 10 of the Northern Ireland Act 1998;
- (c) Schedule 9 of the Government of Wales Act 2006,

and any reference to Schedule 6, Schedule 10 or Schedule 9 is a reference to that Schedule in that Act;

“relevant authority” means—

- (a) in respect of a compatibility question, the Commissioner for Children and Young People in Scotland, the Lord Advocate and the Scottish Commission for Human Rights;
- (b) in any other case, the Advocate General for Scotland and—
 - (i) in the case of a devolution issue within the meaning of Schedule 6, the Lord Advocate;
 - (ii) in the case of a devolution issue within the meaning of Schedule 10, the Attorney General for Northern Ireland, and the First Minister and deputy First Minister acting jointly;
 - (iii) in the case of a devolution issue within the meaning of Schedule 9, the Counsel General to the Welsh Government.

(14) Form 82.4 was substituted by S.S.I. 2006/83.

(15) S.S.I. 2021/468, last amended by S.S.I. 2023/196.

Raising a compatibility question or devolution issue

22.2.—(1) A compatibility question or devolution issue is raised by specifying a compatibility question or devolution issue in Form 22.2.

(2) A compatibility question or devolution issue in Form 22.2 is to be lodged—

- (a) by an appellant, when the note of appeal is lodged;
- (b) by a respondent, when answers to the note of appeal are lodged,

unless the Court allows an appellant or a respondent to raise a compatibility question or devolution issue at a later stage in proceedings.

(3) An application to allow a compatibility question or devolution issue to be raised after the note of appeal has been lodged or answers to the note of appeal have been lodged, as the case may be, is to be made by motion.

(4) The party raising a compatibility question or devolution issue must specify, in sufficient detail to enable the Court to determine whether a compatibility question or devolution issue arises—

- (a) the facts and circumstances;
- (b) the contentions of law,

on the basis of which it is alleged that the compatibility question or devolution issue arises in the appeal.

(5) The Court may not determine a compatibility question or devolution issue unless permission has been given for the compatibility question or devolution issue to proceed.

Intimation and service

22.3.—(1) This rule applies to the intimation of—

- (a) a compatibility question on a relevant authority under section 34(1) of the 2024 Act;
- (b) a devolution issue on a relevant authority under—
 - (i) paragraph 5 of Schedule 6;
 - (ii) paragraph 23 of Schedule 10;
 - (iii) paragraph 14(1) of Schedule 9.

(2) When a compatibility question or devolution issue is raised, the party raising it must intimate it to the relevant authority unless the relevant authority is a party to the appeal.

(3) Within 14 days after intimation, the relevant authority may give notice to the Clerk that it intends to take part in the appeal as a party, as the case may be, under—

- (a) section 34(2) of the 2024 Act;
- (b) paragraph 6 of Schedule 6;
- (c) paragraph 24 of Schedule 10;
- (d) paragraph 14(2) of Schedule 9.

Permission to proceed

22.4.—(1) When a compatibility question or devolution issue is raised, the Clerk must fix a hearing and intimate the date and time of that hearing to the parties.

(2) Within 14 days after the Clerk intimates the date and time of the hearing, each party must lodge a note of argument.

(3) That note of argument must summarise the submissions the party intends to make on the question of whether a compatibility question or, as the case may be, devolution issue arises in the appeal.

(4) At the hearing, the procedural Appeal Sheriff must determine whether a compatibility question or, as the case may be, devolution issue arises in the appeal.

(5) Where the procedural Appeal Sheriff determines that a compatibility question or devolution issue arises, the procedural Appeal Sheriff must grant permission for the compatibility question or devolution issue to proceed.

(6) Where the procedural Appeal Sheriff determines that no compatibility question or devolution issue arises, the procedural Appeal Sheriff must refuse permission for the compatibility question or devolution issue to proceed.

(7) At the hearing the procedural Appeal Sheriff may make any order, including an order concerning expenses.

(8) In this rule, “party” includes a relevant authority that has given notice to the Clerk that it intends to take part in the appeal as a party, and “parties” is construed accordingly.

Participation by the relevant authority

22.5.—(1) Paragraph (2) applies where a relevant authority has given notice to the Clerk that it intends to take part in the appeal as a party.

(2) Within 7 days after permission to proceed is given, the relevant authority must lodge a minute containing the relevant authority’s written submissions in respect of the compatibility question or devolution issue.

Reference to the Inner House or Supreme Court

22.6.—(1) This rule applies—

- (a) to the reference of a compatibility question to the Inner House of the Court of Session for determination under section 35(1) of the 2024 Act;
- (b) where the Court has been required by the Lord Advocate to refer a compatibility question to the Supreme Court under section 36 of the 2024 Act;
- (c) to the reference of a devolution issue to the Inner House of the Court of Session for determination under—
 - (i) paragraph 7 of Schedule 6;
 - (ii) paragraph 25 of Schedule 10;
 - (iii) paragraph 15 of Schedule 9;
- (d) where the Court has been required by a relevant authority to refer a devolution issue to the Supreme Court under—
 - (i) paragraph 33 of Schedule 6;
 - (ii) paragraph 33 of Schedule 10;
 - (iii) paragraph 29 of Schedule 9.

(2) The Court is to make an order concerning the drafting and adjustment of the reference.

(3) The reference must specify—

- (a) the questions for the Inner House or the Supreme Court;
- (b) the addresses of the parties;
- (c) a concise statement of the background to the matter, including—

- (i) the facts of the case, including any relevant findings of fact;
- (ii) the main issues in the case and contentions of the parties with regard to them;
- (d) the relevant law including the relevant provisions of the 2024 Act or, as the case may be, the Scotland Act 1998, the Northern Ireland Act 1998 or the Government of Wales Act 2006;
- (e) the reasons why an answer to the questions is considered necessary for the purpose of disposing of the proceedings.
- (4) The reference must have annexed to it—
 - (a) a copy of all orders made in the appeal;
 - (b) a copy of any judgments in the proceedings.
- (5) When the reference has been drafted and adjusted, the Court is to make and sign the reference.
- (6) The Clerk must—
 - (a) send a copy of the reference to the parties to the proceedings;
 - (b) certify on the back of the principal reference that sub-paragraph (a) has been complied with.

Reference to the Inner House or Supreme Court: further procedure

- 22.7.**—(1) On a reference being made, the appeal must, unless the Court orders otherwise, be sisted until the compatibility question or devolution issue has been determined.
- (2) Despite a reference being made, the Court continues to have the power to make any interim order required in the interests of the parties.
- (3) The Court may recall a sist for the purpose of making such interim orders.
- (4) On a reference being made the Clerk must send the principal copy of the reference to either (as the case may be)—
- (a) the Deputy Principal Clerk of the Court of Session; or
 - (b) the Registrar of the Supreme Court (together with 7 copies).
- (5) Unless the Court orders otherwise, the Clerk must not send the principal copy of the reference where an appeal against the making of the reference is pending.
- (6) An appeal is to be treated as pending either—
- (a) until the expiry of the time for making that appeal; or
 - (b) where an appeal has been made, until that appeal has been determined.

Reference to the Inner House or Supreme Court: procedure following determination

- 22.8.**—(1) This rule applies where either the Inner House of the Court of Session or the Supreme Court has determined a compatibility question or devolution issue.
- (2) Upon receipt of the determination, the Clerk must place a copy of the determination before the Court.
- (3) The Court may, on the motion of any party or otherwise, order such further procedure as may be required.
- (4) Where the Court makes an order other than on the motion of a party, the Clerk must intimate a copy of the order on all parties to the appeal.”

- (3) In schedule 2 (forms)(16), in Form 22.2 (devolution issue)—
- (a) in the title for “**Devolution**” substitute “**Compatibility question or devolution**”;
 - (b) for “DEVOLUTION ISSUE” substitute “COMPATIBILITY QUESTION [or DEVOLUTION ISSUE]”;
 - (c) for “devolution issue” substitute “compatibility question [or devolution issue]”;
 - (d) in paragraph (a), before “devolution issue” insert “compatibility question or”;
 - (e) in paragraph (b), before “*the Scotland Act 1998*” insert “*the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024,*”.

Edinburgh
27th June 2024

CJM SUTHERLAND
Lord President
I.P.D.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

SCHEDULE

Paragraph 2(4)(h)

Form 25A.13A

Rule 25A.13(2)(a)

Form of intimation to the Lord Advocate that the court is considering making an order suspending the effect of a strike down declarator

To: Lord Advocate
25 Chambers Street
Edinburgh

1. You are given notice that in an action raised in the Court of Session, the court has decided that words in a pre-commencement Act of the Scottish Parliament to which section 29 of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 applies [*or* words in subordinate legislation made by virtue of a pre-commencement Act of the Scottish Parliament to which section 30 of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 applies] give rise to an incompatibility with the UNCRC requirements, within the meaning of that Act. A copy of the relevant opinion [*or* interlocutor] is enclosed.
2. The court is considering whether to make an order suspending the effect of the decision for any period and on any conditions to allow the incompatibility to be remedied.
3. If you wish to take part as a party in the proceedings so far as they relate to the making of the order mentioned in paragraph 2 you must lodge with the Deputy Principal Clerk of Session, Court of Session, 2 Parliament Square, Edinburgh EH1 1RQ a notice in writing stating that you intend to take part as a party to the proceedings. The notice must be lodged within 7 days of (*date on which intimation was given*).

Date (*insert date*)

(*Signed*)

Deputy Principal Clerk of Session

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 and the Sheriff Appeal Court Rules 2021 pursuant to the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 (“the 2024 Act”).

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Paragraph 2(2) substitutes a new Chapter 25A into the Rules of the Court of Session 1994 to make provision for both compatibility questions under the 2024 Act and devolution issues. Chapter 82 is also amended by paragraph 2(3) to make provision for strike down and incompatibility declarators. Paragraph 2(4) makes consequential amendments to various forms.

Paragraph 3(2) substitutes a new Chapter 22 into the Sheriff Appeal Court Rules 2021 to make provision for both compatibility questions under the 2024 Act and devolution issues. Paragraph 3(3) makes consequential amendments to Form 22.2.