

Status: Point in time view as at 01/04/2004.

Changes to legislation: Government of Wales Act 1998, Part V is up to date with all changes known to be in force on or before 09 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 8

DEVOLUTION ISSUES

Commencement Information

II Sch. 8 in force at 1.12.1998 by S.I. 1998/2789, art. 2

PART V

GENERAL

Proceedings in the House of Lords

- 29 Any devolution issue which arises in judicial proceedings in the House of Lords shall be referred to the Judicial Committee unless the House considers it more appropriate, having regard to all the circumstances, that they should determine the issue.

Direct references to Judicial Committee

- 30 (1) The relevant law officer or the Assembly may require any court or tribunal to refer to the Judicial Committee any devolution issue which has arisen in any proceedings before it to which he or it is a party.
- (2) In sub-paragraph (1) “the relevant law officer” means—
- (a) in relation to proceedings in England and Wales, the Attorney General,
 - (b) in relation to proceedings in Scotland, the Advocate General for Scotland, and
 - (c) in relation to proceedings in Northern Ireland, the Attorney General for Northern Ireland.
- 31 (1) The Attorney General or the Assembly may refer to the Judicial Committee any devolution issue which is not the subject of proceedings.
- (2) Where a reference is made under sub-paragraph (1) by the Attorney General in relation to a devolution issue which relates to the proposed exercise of a function by the Assembly—
- (a) the Attorney General shall notify the Assembly of that fact, and

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- (b) the Assembly shall not exercise the function in the manner proposed during the period beginning with the receipt of the notification and ending with the reference being decided or otherwise disposed of.

The Judicial Committee

- 32 Any decision of the Judicial Committee in proceedings under this Schedule—
- (a) shall be stated in open court, and
 - (b) shall be binding in all legal proceedings (other than proceedings before the Judicial Committee).
- 33 No member of the Judicial Committee shall sit and act as a member of the Judicial Committee in proceedings under this Schedule unless he holds or has held—
- (a) the office of a Lord of Appeal in Ordinary, or
 - (b) high judicial office as defined in section 25 of the ^{M1}Appellate Jurisdiction Act 1876 (ignoring for this purpose section 5 of the ^{M2}Appellate Jurisdiction Act 1887).

Marginal Citations

M1 1876 c. 59.

M2 1887 c. 70.

- 34 (1) Her Majesty may by Order in Council—
- (a) confer on the Judicial Committee in relation to proceedings under this Schedule such powers as appear to be appropriate,
 - (b) apply the ^{M3}Judicial Committee Act 1833 in relation to proceedings under this Schedule with exceptions and modifications, and
 - (c) make rules for regulating the procedure with respect to proceedings under this Schedule before the Judicial Committee.
- (2) An Order in Council under this paragraph may contain any appropriate consequential, incidental, supplementary or transitional provisions or savings (including provisions in the form of amendments or repeals of enactments).
- (3) No recommendation shall be made to Her Majesty in Council to make an Order in Council under this paragraph which contains provisions in the form of amendments or repeals of enactments contained in an Act unless a draft of the statutory instrument containing the Order in Council has been laid before, and approved by a resolution of, each House of Parliament.
- (4) A statutory instrument containing an Order in Council which makes provision falling within sub-paragraph (1)(a) or (b) shall (unless a draft of it has been approved by a resolution of each House of Parliament) be subject to annulment in pursuance of a resolution of either House of Parliament.

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Marginal Citations

M3 1833 c. 41.

Costs

- 35 (1) A court or tribunal before which any proceedings take place may take account of any additional expense of the kind mentioned in sub-paragraph (3) in deciding any question as to costs or expenses.
- (2) In deciding any such question, the court or tribunal may award the whole or part of the additional expense as costs or expenses to the party who incurred it (whatever the decision on the devolution issue).
- (3) The additional expense is any additional expense which the court or tribunal considers that any party to the proceedings has incurred as a result of the participation of any person in pursuance of paragraph 5, 14 or 24.

Procedure of courts and tribunals

- 36 Any power to make provision for regulating the procedure before any court or tribunal shall include power to make provision for the purposes of this Schedule including, in particular, provision—
- (a) for prescribing the stage in the proceedings at which a devolution issue is to be raised or referred,
 - (b) for the staying or sisting of proceedings for the purpose of any proceedings under this Schedule, and
 - (c) for determining the manner in which and the time within which any notice or intimation is to be given.

References to be for decision

- 37 Any function conferred by this Schedule to refer a devolution issue to a court shall be construed as a function of referring the issue to the court for decision.

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