

*Status: Point in time view as at 03/07/2012.*

*Changes to legislation: There are currently no known outstanding effects for the Scotland Act 1998, SCHEDULE 6. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 6

Section 98.

#### DEVOLUTION ISSUES

#### PART I

##### PRELIMINARY

- 1 In this Schedule “devolution issue” means—
- (a) a question whether an Act of the Scottish Parliament or any provision of an Act of the Scottish Parliament is within the legislative competence of the Parliament,
  - (b) a question whether any function (being a function which any person has purported, or is proposing, to exercise) is a function of the Scottish Ministers, the First Minister or the Lord Advocate,
  - (c) a question whether the purported or proposed exercise of a function by a member of the [<sup>F1</sup>Scottish Government] is, or would be, within devolved competence,
  - (d) a question whether a purported or proposed exercise of a function by a member of the [<sup>F1</sup>Scottish Government] is, or would be, incompatible with any of the Convention rights or with [<sup>F2</sup>EU] law,
  - (e) a question whether a failure to act by a member of the [<sup>F1</sup>Scottish Government] is incompatible with any of the Convention rights or with [<sup>F2</sup>EU] law,
  - (f) any other question about whether a function is exercisable within devolved competence or in or as regards Scotland and any other question arising by virtue of this Act about reserved matters.

#### Textual Amendments

- F1** Words in Act substituted (3.7.2012) by [Scotland Act 2012 \(c. 11\)](#), **ss. 12(2)(a)**, 44(5) (with s. 12(3)); [S.I. 2012/1710](#), art. 2(f)
- F2** Words in Sch. 6 para. 1 substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), arts. 3, 6

- 2 A devolution issue shall not be taken to arise in any proceedings merely because of any contention of a party to the proceedings which appears to the court or tribunal before which the proceedings take place to be frivolous or vexatious.

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## PART II

### PROCEEDINGS IN SCOTLAND

#### *Application of Part II*

3 This Part of this Schedule applies in relation to devolution issues in proceedings in Scotland.

#### *Institution of proceedings*

- 4 (1) Proceedings for the determination of a devolution issue may be instituted by the Advocate General or the Lord Advocate.
- (2) The Lord Advocate may defend any such proceedings instituted by the Advocate General.
- (3) This paragraph is without prejudice to any power to institute or defend proceedings exercisable apart from this paragraph by any person.

#### *Intimation of devolution issue*

- 5 Intimation of any devolution issue which arises in any proceedings before a court or tribunal shall be given to the Advocate General and the Lord Advocate (unless the person to whom the intimation would be given is a party to the proceedings).
- 6 A person to whom intimation is given in pursuance of paragraph 5 may take part as a party in the proceedings, so far as they relate to a devolution issue.

#### *Reference of devolution issue to higher court*

- 7 A court, other than the [<sup>F3</sup>Supreme Court] or any court consisting of three or more judges of the Court of Session, may refer any devolution issue which arises in proceedings (other than criminal proceedings) before it to the Inner House of the Court of Session.

#### **Textual Amendments**

**F3** Words in [Sch. 6 para. 7](#) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 40\(4\), 148\(1\)](#), [Sch. 9 para. 103\(2\)](#); S.I. 2009/1604, [art. 2](#)

- 8 A tribunal from which there is no appeal shall refer any devolution issue which arises in proceedings before it to the Inner House of the Court of Session; and any other tribunal may make such a reference.
- 9 A court, other than any court consisting of two or more judges of the High Court of Justiciary, may refer any devolution issue which arises in criminal proceedings before it to the High Court of Justiciary.

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*References from superior courts to [<sup>F4</sup>Supreme Court]*

**Textual Amendments**

**F4** Words in heading before Sch. 6 para. 10 substituted (1.10.2009) by [Constitutional Reform Act 2005](#) (c. 4), ss. 40(4), 148(1), [Sch. 9 para. 103\(3\)](#); S.I. 2009/1604, [art. 2](#)

- 10 Any court consisting of three or more judges of the Court of Session may refer any devolution issue which arises in proceedings before it (otherwise than on a reference under paragraph 7 or 8) to the [<sup>F5</sup>Supreme Court].

**Textual Amendments**

**F5** Words in [Sch. 6 para. 10](#) substituted (1.10.2009) by [Constitutional Reform Act 2005](#) (c. 4), ss. 40(4), 148(1), [Sch. 9 para. 103\(4\)](#); S.I. 2009/1604, [art. 2](#)

- 11 Any court consisting of two or more judges of the High Court of Justiciary may refer any devolution issue which arises in proceedings before it (otherwise than on a reference under paragraph 9) to the [<sup>F6</sup>Supreme Court].

**Textual Amendments**

**F6** Words in [Sch. 6 para. 11](#) substituted (1.10.2009) by [Constitutional Reform Act 2005](#) (c. 4), ss. 40(4), 148(1), [Sch. 9 para. 103\(5\)](#); S.I. 2009/1604, [art. 2](#)

*Appeals from superior courts to [<sup>F7</sup>Supreme Court]*

**Textual Amendments**

**F7** Words in heading before Sch. 6 para. 12 substituted (1.10.2009) by [Constitutional Reform Act 2005](#) (c. 4), ss. 40(4), 148(1), [Sch. 9 para. 103\(6\)](#); S.I. 2009/1604, [art. 2](#)

- 12 An appeal against a determination of a devolution issue by the Inner House of the Court of Session on a reference under paragraph 7 or 8 shall lie to the [<sup>F8</sup>Supreme Court].

**Textual Amendments**

**F8** Words in [Sch. 6 para. 12](#) substituted (1.10.2009) by [Constitutional Reform Act 2005](#) (c. 4), ss. 40(4), 148(1), [Sch. 9 para. 103\(7\)](#); S.I. 2009/1604, [art. 2](#)

- 13 An appeal against a determination of a devolution issue by—
- (a) a court of two or more judges of the High Court of Justiciary (whether in the ordinary course of proceedings or on a reference under paragraph 9), or
  - (b) a court of three or more judges of the Court of Session from which there is no appeal to the [<sup>F9</sup>Supreme Court apart from this paragraph],

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shall lie to the [<sup>F10</sup>Supreme Court], but only with [<sup>F11</sup>permission] of the court [<sup>F12</sup>from which the appeal lies] or, failing such [<sup>F11</sup>permission], with [<sup>F13</sup>permission] of the [<sup>F10</sup>Supreme Court].

#### Textual Amendments

- F9** Words in Sch. 6 para. 13 substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 40\(4\), 148\(1\), Sch. 9 para. 103\(8\)\(a\)](#); S.I. 2009/1604, [art. 2](#)
- F10** Words in Sch. 6 para. 13 substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 40\(4\), 148\(1\), Sch. 9 para. 103\(8\)\(b\)](#); S.I. 2009/1604, [art. 2](#)
- F11** Words in Sch. 6 para. 13 substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 40\(4\), 148\(1\), Sch. 9 para. 103\(8\)\(c\)](#); S.I. 2009/1604, [art. 2](#)
- F12** Words in Sch. 6 para. 13 substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 40\(4\), 148\(1\), Sch. 9 para. 103\(8\)\(d\)](#); S.I. 2009/1604, [art. 2](#)
- F13** Words in Sch. 6 para. 13 substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 40\(4\), 148\(1\), Sch. 9 para. 103\(8\)\(e\)](#); S.I. 2009/1604, [art. 2](#)

### PART III

#### PROCEEDINGS IN ENGLAND AND WALES

##### *Application of Part III*

- 14 This Part of this Schedule applies in relation to devolution issues in proceedings in England and Wales.

##### *Institution of proceedings*

- 15 (1) Proceedings for the determination of a devolution issue may be instituted by the Attorney General.
- (2) The Lord Advocate may defend any such proceedings.
- (3) This paragraph is without prejudice to any power to institute or defend proceedings exercisable apart from this paragraph by any person.

##### *Notice of devolution issue*

- 16 A court or tribunal shall order notice of any devolution issue which arises in any proceedings before it to be given to the Attorney General and the Lord Advocate (unless the person to whom the notice would be given is a party to the proceedings).
- 17 A person to whom notice is given in pursuance of paragraph 16 may take part as a party in the proceedings, so far as they relate to a devolution issue.

##### *Reference of devolution issue to High Court or Court of Appeal*

- 18 A magistrates' court may refer any devolution issue which arises in proceedings (other than criminal proceedings) before it to the High Court.
- 19 (1) A court may refer any devolution issue which arises in proceedings (other than criminal proceedings) before it to the Court of Appeal.

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- (2) Sub-paragraph (1) does not apply to—
- (a) a magistrates' court, the Court of Appeal or the <sup>F14</sup>Supreme Court], or
  - (b) the High Court if the devolution issue arises in proceedings on a reference under paragraph 18.

**Textual Amendments**

**F14** Words in Sch. 6 para. 19(2)(a) substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), ss. 40(4), 148(1), Sch. 9 para. 104(2); S.I. 2009/1604, art. 2

- 20 A tribunal from which there is no appeal shall refer any devolution issue which arises in proceedings before it to the Court of Appeal; and any other tribunal may make such a reference.
- 21 A court, other than the <sup>F15</sup>Supreme Court] or the Court of Appeal, may refer any devolution issue which arises in criminal proceedings before it to—
- (a) the High Court (if the proceedings are summary proceedings), or
  - (b) the Court of Appeal (if the proceedings are proceedings on indictment).

**Textual Amendments**

**F15** Words in Sch. 6 para. 21 substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), ss. 40(4), 148(1), Sch. 9 para. 104(3); S.I. 2009/1604, art. 2

*References from Court of Appeal to <sup>F16</sup>Supreme Court]*

**Textual Amendments**

**F16** Words in heading before Sch. 6 para. 22 substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), ss. 40(4), 148(1), Sch. 9 para. 104(4); S.I. 2009/1604, art. 2

- 22 The Court of Appeal may refer any devolution issue which arises in proceedings before it (otherwise than on a reference under paragraph 19, 20 or 21) to the <sup>F17</sup>Supreme Court].

**Textual Amendments**

**F17** Words in Sch. 6 para. 22 substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), ss. 40(4), 148(1), Sch. 9 para. 104(5); S.I. 2009/1604, art. 2

*Appeals from superior courts to <sup>F18</sup>Supreme Court]*

**Textual Amendments**

**F18** Words in heading before Sch. 6 para. 23 substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), ss. 40(4), 148(1), Sch. 9 para. 104(6); S.I. 2009/1604, art. 2

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- 23 An appeal against a determination of a devolution issue by the High Court or the Court of Appeal on a reference under paragraph 18, 19, 20 or 21 shall lie to the [<sup>F19</sup>Supreme Court], but only with [<sup>F20</sup>permission] of the High Court or (as the case may be) the Court of Appeal or, failing such [<sup>F20</sup>permission], with [<sup>F21</sup>permission] of the [<sup>F19</sup>Supreme Court].

#### Textual Amendments

- F19** Words in Sch. 6 para. 23 substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 40\(4\), 148\(1\), Sch. 9 para. 104\(7\)\(a\)](#); S.I. 2009/1604, [art. 2](#)
- F20** Words in Sch. 6 para. 23 substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 40\(4\), 148\(1\), Sch. 9 para. 104\(7\)\(b\)](#); S.I. 2009/1604, [art. 2](#)
- F21** Words in Sch. 6 para. 23 substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 40\(4\), 148\(1\), Sch. 9 para. 104\(7\)\(c\)](#); S.I. 2009/1604, [art. 2](#)

## PART IV

### PROCEEDINGS IN NORTHERN IRELAND

#### *Application of Part IV*

- 24 This Part of this Schedule applies in relation to devolution issues in proceedings in Northern Ireland.

#### *Institution of proceedings*

- 25 (1) Proceedings for the determination of a devolution issue may be instituted by the [<sup>F22</sup>Advocate General for Northern Ireland].
- (2) The Lord Advocate may defend any such proceedings.
- (3) This paragraph is without prejudice to any power to institute or defend proceedings exercisable apart from this paragraph by any person.

#### Textual Amendments

- F22** Words in Sch. 6 para. 25(1) substituted (12.4.2010) by [Justice \(Northern Ireland\) Act 2002 \(c. 26\), ss. 28, 87, Sch. 7 para. 4\(a\)](#); S.R. 2010/113, [art. 2](#), Sch. para. 19(a)

#### *Notice of devolution issue*

- 26 A court or tribunal shall order notice of any devolution issue which arises in any proceedings before it to be given to the [<sup>F23</sup>Advocate General for Northern Ireland] and the Lord Advocate (unless the person to whom the notice would be given is a party to the proceedings).

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#### Textual Amendments

**F23** Words in Sch. 6 para. 26 substituted (12.4.2010) by Justice (Northern Ireland) Act 2002 (c. 26), ss. 28, 87, Sch. 7 para. 4(b); S.R. 2010/113, art. 2, Sch. para. 19(a)

27 A person to whom notice is given in pursuance of paragraph 26 may take part as a party in the proceedings, so far as they relate to a devolution issue.

#### *Reference of devolution issue to Court of Appeal*

28 A court, other than the [<sup>F24</sup>Supreme Court] or the Court of Appeal in Northern Ireland, may refer any devolution issue which arises in any proceedings before it to the Court of Appeal in Northern Ireland.

#### Textual Amendments

**F24** Words in Sch. 6 para. 28 substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), ss. 40(4), 148(1), Sch. 9 para. 105(2); S.I. 2009/1604, art. 2

29 A tribunal from which there is no appeal shall refer any devolution issue which arises in any proceedings before it to the Court of Appeal in Northern Ireland; and any other tribunal may make such a reference.

#### *References from Court of Appeal to [<sup>F25</sup>Supreme Court]*

#### Textual Amendments

**F25** Words in heading before Sch. 6 para. 30 substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), ss. 40(4), 148(1), Sch. 9 para. 105(3); S.I. 2009/1604, art. 2

30 The Court of Appeal in Northern Ireland may refer any devolution issue which arises in proceedings before it (otherwise than on a reference under paragraph 28 or 29) to the [<sup>F26</sup>Supreme Court].

#### Textual Amendments

**F26** Words in Sch. 6 para. 30 substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), ss. 40(4), 148(1), Sch. 9 para. 105(4); S.I. 2009/1604, art. 2

#### *Appeals from Court of Appeal to [<sup>F27</sup>Supreme Court]*

#### Textual Amendments

**F27** Words in heading before Sch. 6 para. 31 substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), ss. 40(4), 148(1), Sch. 9 para. 105(5); S.I. 2009/1604, art. 2

31 An appeal against a determination of a devolution issue by the Court of Appeal in Northern Ireland on a reference under paragraph 28 or 29 shall lie to the [<sup>F28</sup>Supreme

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Court], but only with [<sup>F29</sup>permission] of the Court of Appeal in Northern Ireland or, failing such [<sup>F29</sup>permission], with [<sup>F30</sup>permission] of the [<sup>F28</sup>Supreme Court].

#### Textual Amendments

- F28** Words in Sch. 6 para. 31 substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 40\(4\), 148\(1\), Sch. 9 para. 105\(6\)\(a\)](#); S.I. 2009/1604, [art. 2](#)
- F29** Words in Sch. 6 para. 31 substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 40\(4\), 148\(1\), Sch. 9 para. 105\(6\)\(b\)](#); S.I. 2009/1604, [art. 2](#)
- F30** Words in Sch. 6 para. 31 substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 40\(4\), 148\(1\), Sch. 9 para. 105\(6\)\(c\)](#); S.I. 2009/1604, [art. 2](#)

## PART V

### GENERAL

F31 .....

#### Textual Amendments

- F31** Sch. 6 para. 32 and preceding heading repealed (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 40\(4\), 146, 148\(1\), Sch. 9 para. 106\(2\), Sch. 18 Pt. 5](#); S.I. 2009/1604, [art. 2](#)

32

F32 .....

#### Textual Amendments

- F32** Sch. 6 para. 32 and preceding heading repealed (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 40\(4\), 146, 148\(1\), Sch. 9 para. 106\(2\), Sch. 18 Pt. 5](#); S.I. 2009/1604, [art. 2](#)

### *Direct references to [<sup>F33</sup>Supreme Court]*

#### Textual Amendments

- F33** Words in heading before Sch. 6 para. 33 substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 40\(4\), 148\(1\), Sch. 9 para. 106\(3\)](#); S.I. 2009/1604, [art. 2](#)

33

The Lord Advocate, the Advocate General, the Attorney General or the [<sup>F34</sup>Advocate General for Northern Ireland] may require any court or tribunal to refer to the [<sup>F35</sup>Supreme Court] any devolution issue which has arisen in proceedings before it to which he is a party.

#### Textual Amendments

- F34** Words in Sch. 6 para. 33 substituted (12.4.2010) by [Justice \(Northern Ireland\) Act 2002 \(c. 26\), ss. 28, 87, Sch. 7 para. 4\(c\)](#); S.R. 2010/113, [art. 2](#), Sch. para. 19(a)



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**F35** Words in Sch. 6 para. 33 substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), ss. 40(4), 148(1), Sch. 9 para. 106(4); S.I. 2009/1604, art. 2

34 The Lord Advocate, the Attorney General, the Advocate General or the [<sup>F36</sup> Advocate General for Northern Ireland] may refer to the [<sup>F37</sup> Supreme Court] any devolution issue which is not the subject of proceedings.

#### Textual Amendments

**F36** Words in Sch. 6 para. 34 substituted (12.4.2010) by Justice (Northern Ireland) Act 2002 (c. 26), ss. 28, 87, Sch. 7 para. 4(c); S.R. 2010/113, art. 2, Sch. para. 19(a)

**F37** Words in Sch. 6 para. 34 substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), ss. 40(4), 148(1), Sch. 9 para. 106(5); S.I. 2009/1604, art. 2

35 (1) This paragraph applies where a reference is made under paragraph 34 in relation to a devolution issue which relates to the proposed exercise of a function by a member of the [<sup>F1</sup> Scottish Government].

(2) The person making the reference shall notify a member of the [<sup>F1</sup> Scottish Government] of that fact.

(3) No member of the [<sup>F1</sup> Scottish Government] shall exercise the function in the manner proposed during the period beginning with the receipt of the notification under sub-paragraph (2) and ending with the reference being decided or otherwise disposed of.

(4) Proceedings relating to any possible failure by a member of the [<sup>F1</sup> Scottish Government] to comply with sub-paragraph (3) may be instituted by the Advocate General.

(5) Sub-paragraph (4) is without prejudice to any power to institute proceedings exercisable apart from that sub-paragraph by any person.

#### Textual Amendments

**F1** Words in Act substituted (3.7.2012) by Scotland Act 2012 (c. 11), ss. 12(2)(a), 44(5) (with s. 12(3)); S.I. 2012/1710, art. 2(f)

#### *Expenses*

36 (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 (as the case may be) 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 6, 17 or 27.

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*Procedure of courts and tribunals*

- 37 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 sisting or staying 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 intimation or notice is to be given.

*Interpretation*

- 38 Any duty or power conferred by this Schedule to refer a devolution issue to a court shall be construed as a duty or (as the case may be) power to refer the issue to the court for decision.

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**Changes to legislation:**

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