

Status: Point in time view as at 24/03/2022.

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

SCHEDULES

SCHEDULE 6

DEVOLUTION ISSUES

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 [^{F1}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

- F1** 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

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- 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.

References from superior courts to [^{F2}Supreme Court]

Textual Amendments

- F2** 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 [^{F3}Supreme Court].

Textual Amendments

- F3** 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 [^{F4}Supreme Court].

Textual Amendments

- F4** 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 [^{F5}Supreme Court]

Textual Amendments

- F5** 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 [^{F6}Supreme Court].

Textual Amendments

- F6** 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](#)

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- 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 ^[F7]Supreme Court apart from this paragraph],
- shall lie to the ^[F8]Supreme Court], but only with ^[F9]permission] of the court ^[F10]from which the appeal lies] or, failing such ^[F9]permission], with ^[F11]permission] of the ^[F8]Supreme Court].

Textual Amendments

- F7** 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](#)
- F8** 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](#)
- 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\(8\)\(c\); 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\(8\)\(d\); 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\(8\)\(e\); S.I. 2009/1604, art. 2](#)

- ^[F12]13A In criminal proceedings, an application to the High Court for permission under paragraph 13 must be made—
- (a) within 28 days of the date of the determination against which the appeal lies, or
 - (b) within such longer period as the High Court considers equitable having regard to all the circumstances.

Textual Amendments

- F12** [Sch. 6 para. 13A-13B](#) inserted (22.4.2013) by [Scotland Act 2012 \(c. 11\), ss. 37, 44\(5\); S.I. 2013/6, art. 2\(d\)](#)

- 13B In criminal proceedings, an application to the Supreme Court for permission under paragraph 13 must be made—
- (a) within 28 days of the date on which the High Court refused permission under that paragraph, or
 - (b) within such longer period as the Supreme Court considers equitable having regard to all the circumstances.]

Textual Amendments

- F12** [Sch. 6 para. 13A-13B](#) inserted (22.4.2013) by [Scotland Act 2012 \(c. 11\), ss. 37, 44\(5\); S.I. 2013/6, art. 2\(d\)](#)

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