

*Status: Point in time view as at 12/04/2010.*

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

## SCHEDULES

### SCHEDULE 10

#### DEVOLUTION ISSUES

##### PART V

##### GENERAL

*F1* . . .

##### Textual Amendments

**F1** Sch. 10 para. 32 and preceding cross-heading repealed (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 40, 146, 148, Sch. 9 para. 118(2), [Sch. 18 Pt. 5](#); S.I. 2009/1604, [art. 2\(a\)\(d\)\(f\)](#)

32 *F2* . . . . .

##### Textual Amendments

**F2** Sch. 10 para. 32 and preceding cross-heading repealed (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 40, 146, 148, Sch. 9 para. 118(2), [Sch. 18 Pt. 5](#); S.I. 2009/1604, [art. 2\(a\)\(d\)\(f\)](#)

*Direct references to <sup>F3</sup>Supreme Court]*

##### Textual Amendments

**F3** Words in cross-heading preceding Sch. 10 para. 33 substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 40, 148, [Sch. 9 para. 118\(3\)](#); S.I. 2009/1604, [art. 2\(a\)\(d\)](#)

33 The Attorney General, [<sup>F4</sup>the Advocate General for Northern Ireland, the Attorney General for Northern Ireland] or the Advocate General for Scotland may require any court or tribunal to refer to the [<sup>F5</sup>Supreme Court] any devolution issue which has arisen in proceedings before it to which he is or they are a party.

##### Textual Amendments

**F4** Words in Sch. 10 para. 34 substituted (12.4.2010) by [Justice \(Northern Ireland\) Act 2002 \(c. 26\)](#), s. 87(1), [Sch. 7 para. 2\(6\)](#); S.R. 2010/113, art. 2, Sch. para. 19(a)

**F5** Words in Sch. 10 para. 33 substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 40, 148, [Sch. 9 para. 118\(4\)](#); S.I. 2009/1604, [art. 2\(a\)\(d\)](#)

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34 The Attorney General, [<sup>F4</sup>the Advocate General for Northern Ireland, the Attorney General for Northern Ireland] or the Advocate General for Scotland may refer to the [<sup>F6</sup>Supreme Court] any devolution issue which is not the subject of proceedings.

**Textual Amendments**  
**F4** Words in Sch. 10 para. 34 substituted (12.4.2010) by Justice (Northern Ireland) Act 2002 (c. 26), s. 87(1), Sch. 7 para. 2(6); S.R. 2010/113, art. 2, Sch. para. 19(a)  
**F6** Words in Sch. 10 para. 34 substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), ss. 40, 148, Sch. 9 para. 118(5); S.I. 2009/1604, art. 2(a)(d)

- 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 Northern Ireland Minister or department.
- (2) The person making the reference shall notify the Northern Ireland Minister or department of that fact.
- (3) No Northern Ireland Minister or department 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 Northern Ireland Minister or department to comply with sub-paragraph (3) may be instituted by the [<sup>F7</sup>Advocate General for Northern Ireland] .
- (5) Sub-paragraph (4) is without prejudice to any power to institute proceedings exercisable apart from that sub-paragraph by any person.

**Textual Amendments**  
**F7** Words in Sch. 10 para. 35(4) substituted (12.4.2010) by Justice (Northern Ireland) Act 2002 (c. 26), s. 87(1), Sch. 7 para. 2(7); S.R. 2010/113, art. 2, Sch. para. 19(a)

*Delegation by First Ministers*

<sup>F8</sup>36 .....

**Textual Amendments**  
**F8** Sch. 10 para. 36 repealed (1.3.2010) by Justice (Northern Ireland) Act 2002 (c. 26), s. 87(1), Sch. 13; S.R. 2010/52, art. 2(e)

*Expenses*

- 37 (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).

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- (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, 14 or 24.

*Procedure of courts and tribunals*

- 38 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.

*Bail and legal aid in criminal proceedings*

- 39 (1) Sub-paragraph (3) applies where a devolution issue arises in proceedings against a person (“the defendant”) for an offence and the issue is referred to the Court of Appeal in Northern Ireland under paragraph 7.
- (2) Sub-paragraphs (3) and (4) apply where such an issue arises in such proceedings and—
- (a) the issue is referred by the [F<sup>9</sup>Court of Appeal] to the [F<sup>10</sup>Supreme Court] under paragraph 9 or 33; or
  - (b) the issue is determined by the [F<sup>9</sup>Court of Appeal] under paragraph 7 and—
    - (i) an appeal to the [F<sup>10</sup>Supreme Court] against the determination is brought under paragraph 10; or
    - (ii) an application for leave to bring such an appeal is made to the [F<sup>9</sup>Court of Appeal] under that paragraph.
- (3) The [F<sup>9</sup>Court of Appeal] may, if it thinks fit, on the application of the defendant, admit him to bail pending the determination of the reference, appeal or application.
- (4) The [F<sup>9</sup>Court of Appeal] may at any time when it appears to the [F<sup>9</sup>Court of Appeal]—
- (a) that it is desirable in the interests of justice that the defendant should have legal aid; and
  - (b) that he has not sufficient means to obtain that aid,
- assign to him a solicitor and counsel, or counsel only, in the reference, appeal or application.
- (5) If, on a question of granting a person free legal aid under sub-paragraph (4), there is a doubt—
- (a) whether it is desirable in the interests of justice that he should have legal aid; or
  - (b) whether he has sufficient means to obtain that aid,
- the doubt shall be resolved in favour of granting him free legal aid.

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- (6) The fees of any counsel, and the expenses and fees of any solicitor, assigned to a person under sub-paragraph (4) shall be defrayed, up to an amount allowed by the Master (Taxing Office), by the Lord Chancellor <sup>F11</sup> ....

#### Textual Amendments

- F9** Words in Sch. 10 para. 39(2)-(4) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 40, 148, Sch. 9 para. 118\(6\)\(a\)](#); S.I. 2009/1604, [art. 2\(a\)\(d\)](#)
- F10** Words in Sch. 10 para. 39(2)-(4) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 40, 148, Sch. 9 para. 118\(6\)\(b\)](#); S.I. 2009/1604, [art. 2\(a\)\(d\)](#)
- F11** Words in Sch. 10 para. 39(6) omitted (12.4.2010) by virtue of [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), [art. 1\(2\)](#), [Sch. 18 para. 58\(2\)](#) (with arts. 28-31)

#### Modifications etc. (not altering text)

- C1** Sch. 10 para. 39(6): transfer of functions (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), [art. 1\(2\)](#), [Sch. 17 para. 16](#) (with arts. 28-31)

- 40 Where a devolution issue arises as mentioned in sub-paragraph (1) of paragraph 39 and—
- (a) the issue is referred to the [<sup>F12</sup>Supreme Court] under paragraph 9 or 33; or
- (b) the issue is determined by the Court of Appeal in Northern Ireland under paragraph 7 and—
- (i) an appeal to the [<sup>F12</sup>Supreme Court] against the determination is brought under paragraph 10; or
- (ii) an application for special leave to bring such an appeal is made to the [<sup>F12</sup>Supreme Court] under that paragraph,
- sub-paragraphs (3) to (6) of paragraph 39 shall apply as if the references to the [<sup>F13</sup>Court of Appeal] were references to the [<sup>F12</sup>Supreme Court] .

#### Textual Amendments

- F12** Words in Sch. 10 para. 40(a)(b) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 40, 148, Sch. 9 para. 119\(a\)](#); S.I. 2009/1604, [art. 2\(a\)\(d\)](#)
- F13** Words in Sch. 10 para. 40(a)(b) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 40, 148, Sch. 9 para. 119\(b\)](#); S.I. 2009/1604, [art. 2\(a\)\(d\)](#)

#### Interpretation

- 41 Any duty or power conferred by this Schedule to refer a devolution issue to a court shall be construed as a duty or power to refer the issue to the court for decision.

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