

*Status: Point in time view as at 24/03/2022.*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 V. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 6

#### DEVOLUTION ISSUES

#### PART V

#### GENERAL

**F1** .....

#### Textual Amendments

**F1** Sch. 6 para. 32 and preceding heading repealed (1.10.2009) by Constitutional Reform Act 2005 (c. 4), ss. 40(4), 146, 148(1), Sch. 9 para. 106(2), **Sch. 18 Pt. 5**; S.I. 2009/1604, **art. 2**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 **F2** .....

#### Textual Amendments

**F2** Sch. 6 para. 32 and preceding heading repealed (1.10.2009) by Constitutional Reform Act 2005 (c. 4), ss. 40(4), 146, 148(1), Sch. 9 para. 106(2), **Sch. 18 Pt. 5**; S.I. 2009/1604, **art. 2**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>F3</sup>Supreme Court]*

#### Textual Amendments

**F3** 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>F4</sup>Advocate General for Northern Ireland] 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 a party.

#### Textual Amendments

**F4** 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)

**F5** 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**

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- 34 The Lord Advocate, the Attorney General, the Advocate General or the [<sup>F6</sup>Advocate General for Northern Ireland] may refer to the [<sup>F7</sup>Supreme Court] any devolution issue which is not the subject of proceedings.

#### Textual Amendments

- F6** 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)
- F7** 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 Scottish Executive.
- (2) The person making the reference shall notify a member of the Scottish Executive of that fact.
- (3) No member of the Scottish Executive 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 Scottish Executive 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.

#### *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.

#### *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.

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### *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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