

SCHEDULES

SCHEDULE 10

Section 79.

DEVOLUTION ISSUES

PART I

PRELIMINARY

- 1 In this Schedule “devolution issue” means—
- (a) a question whether any provision of an Act of the Assembly is within the legislative competence of the Assembly;
 - (b) a question whether a purported or proposed exercise of a function by a Minister or Northern Ireland department is, or would be, invalid by reason of section 24;
 - (c) a question whether a Minister or Northern Ireland department has failed to comply with any of the Convention rights, any obligation under Community law or any order under section 27 so far as relating to such an obligation; or
 - (d) any question arising under this Act about excepted or reserved matters.
- 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.

PART II

PROCEEDINGS IN NORTHERN IRELAND

Application of Part II

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

Institution of proceedings

- 4 (1) Proceedings for the determination of a devolution issue may be instituted or defended by the Attorney General or the Attorney General for Northern Ireland.
- (2) The First Minister and the deputy First Minister acting jointly 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.

Status: This is the original version (as it was originally enacted).

Notice of devolution issue

- 5 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, the Attorney General for Northern Ireland, the First Minister and the deputy First Minister (unless the person to whom the notice would be given is a party to the proceedings).
- 6 A person to whom notice is given in pursuance of paragraph 5 or, where such notice is given to the First Minister and the deputy First Minister, those Ministers acting jointly 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

- 7 A court, other than the House of Lords 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.
- 8 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 Judicial Committee

- 9 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 7 or 8) to the Judicial Committee.

Appeals from Court of Appeal to Judicial Committee

- 10 An appeal against a determination of a devolution issue by the Court of Appeal in Northern Ireland on a reference under paragraph 7 or 8 shall lie to the Judicial Committee, but only with leave of the Court of Appeal in Northern Ireland or, failing such leave, with special leave of the Judicial Committee.

PART III

PROCEEDINGS IN ENGLAND AND WALES

Application of Part III

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

Institution of proceedings

- 12 (1) Proceedings for the determination of a devolution issue may be instituted or defended by the Attorney General.
- (2) The Attorney General for Northern Ireland or the First Minister and the deputy First Minister acting jointly 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.

Status: This is the original version (as it was originally enacted).

Notice of devolution issue

- 13 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, the Attorney General for Northern Ireland, the First Minister and the deputy First Minister (unless the person to whom the notice would be given is a party to the proceedings).
- 14 A person to whom notice is given in pursuance of paragraph 13 or, where such notice is given to the First Minister and the deputy First Minister, those Ministers acting jointly 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

- 15 A magistrates' court may refer any devolution issue which arises in proceedings (other than criminal proceedings) before it to the High Court.
- 16 (1) A court may refer any devolution issue which arises in proceedings (other than criminal proceedings) before it to the Court of Appeal.
- (2) Sub-paragraph (1) does not apply to—
- (a) a magistrates' court, the Court of Appeal or the House of Lords; or
 - (b) the High Court if the devolution issue arises in proceedings on a reference under paragraph 15.
- 17 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.
- 18 A court, other than the House of Lords 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).

References from Court of Appeal to Judicial Committee

- 19 The Court of Appeal may refer any devolution issue which arises in proceedings before it (otherwise than on a reference under paragraph 16, 17 or 18) to the Judicial Committee.

Appeals from superior courts to Judicial Committee

- 20 An appeal against a determination of a devolution issue by the High Court or the Court of Appeal on a reference under paragraph 15, 16, 17 or 18 shall lie to the Judicial Committee, but only with leave of the High Court or the Court of Appeal or, failing such leave, with special leave of the Judicial Committee.

Status: This is the original version (as it was originally enacted).

PART IV

PROCEEDINGS IN SCOTLAND

Application of Part IV

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

Institution of proceedings

- 22 (1) Proceedings for the determination of a devolution issue may be instituted or defended by the Advocate General for Scotland.
- (2) The Attorney General for Northern Ireland or the First Minister and the deputy First Minister acting jointly 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.

Intimation of devolution issue

- 23 Intimation of any devolution issue which arises in any proceedings before a court or tribunal shall be given to the Advocate General for Scotland, the Attorney General for Northern Ireland, the First Minister and the deputy First Minister (unless the person to whom the intimation would be given is a party to the proceedings).
- 24 A person to whom intimation is given in pursuance of paragraph 23 or, where such intimation is given to the First Minister and the deputy First Minister, those Ministers acting jointly 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

- 25 A court, other than the House of Lords 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.
- 26 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.
- 27 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 Judicial Committee

- 28 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 25 or 26) to the Judicial Committee.

Status: This is the original version (as it was originally enacted).

- 29 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 27) to the Judicial Committee.

Appeals from superior courts to Judicial Committee

- 30 An appeal against a determination of a devolution issue by the Inner House of the Court of Session on a reference under paragraph 25 or 26 shall lie to the Judicial Committee.

- 31 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 27); or
 - (b) a court of three or more judges of the Court of Session from which there is no appeal to the House of Lords,
- shall lie to the Judicial Committee, but only with leave of the court concerned or, failing such leave, with special leave of the Judicial Committee.

PART V

GENERAL

Proceedings in the House of Lords

- 32 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 it should determine the issue.

Direct references to Judicial Committee

- 33 The Attorney General, the Attorney General for Northern Ireland, the First Minister and the deputy First Minister acting jointly or the Advocate General for Scotland may require any court or tribunal to refer to the Judicial Committee any devolution issue which has arisen in proceedings before it to which he is or they are a party.
- 34 The Attorney General, the Attorney General for Northern Ireland, the First Minister and the deputy First Minister acting jointly or the Advocate General for Scotland may refer to the Judicial Committee any devolution issue which is not the subject of proceedings.
- 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 subparagraph (2) and ending with the reference being decided or otherwise disposed of.

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- (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 Attorney 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.

Delegation by First Ministers

- 36 The First Minister and the deputy First Minister acting jointly may determine that a Minister or Northern Ireland department specified in the determination may exercise on their behalf, in relation to any proceedings under this Schedule so specified, any power conferred on them by this Schedule.

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).
- (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 Court to the Judicial Committee under paragraph 9 or 33; or
 - (b) the issue is determined by the Court under paragraph 7 and—

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- (i) an appeal to the Committee against the determination is brought under paragraph 10; or
 - (ii) an application for leave to bring such an appeal is made to the Court under that paragraph.
 - (3) The Court 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 Court may at any time when it appears to the Court—
 - (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.
 - (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 out of money provided by Parliament.
- 40 Where a devolution issue arises as mentioned in sub-paragraph (1) of paragraph 39 and—
- (a) the issue is referred to the Judicial Committee 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 Committee against the determination is brought under paragraph 10; or
 - (ii) an application for special leave to bring such an appeal is made to the Committee under that paragraph,
- sub-paragraphs (3) to (6) of paragraph 39 shall apply as if the references to the Court were references to the Committee.

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.