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SCOTTISH STATUTORY INSTRUMENTS

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**2007 No. 361**

**HIGH COURT OF JUSTICIARY  
SHERIFF COURT  
DISTRICT COURTS**

**Act of Adjournal (Criminal Procedure Rules  
Amendment No. 4) (Devolution Issues) 2007**

*Made* - - - - *20th July 2007*

*Coming into force* - - *9th August 2007*

The Lord Justice General, the Lord Justice Clerk and the Lords Commissioners of Justiciary, under and by virtue of the powers conferred on them by section 305 of the Criminal Procedure (Scotland) Act 1995<sup>(1)</sup>, paragraph 37 of Schedule 6 to the Scotland Act 1998<sup>(2)</sup>, paragraph 38 of Schedule 10 to the Northern Ireland Act 1998<sup>(3)</sup> and paragraph 32 of Schedule 9 to the Government of Wales Act 2006<sup>(4)</sup> and of all other powers enabling them in that behalf do hereby enact and declare:

**Citation and commencement**

1.—(1) This Act of Adjournal may be cited as the Act of Adjournal (Criminal Procedure Rules Amendment No. 4) (Devolution Issues) 2007 and shall come into force on 9th August 2007.

(2) This Act of Adjournal shall be inserted in the Books of Adjournal.

**Amendment of the Act of Adjournal (Criminal Procedure Rules) 1996**

2.—(1) The Act of Adjournal (Criminal Procedure Rules) 1996<sup>(5)</sup> shall be amended in accordance with the following sub-paragraphs.

(2) In rule 40.1(1) (interpretation of Chapter)—

(a) in the definition of “devolution issue” for paragraph (c) there shall be substituted—

“(c) Schedule 9 to the Government of Wales Act 2006,”;

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(1) 1995 c. 46.  
(2) 1998, c. 46.  
(3) 1998 c. 47.  
(4) 2006 c. 32.  
(5) S.I.1996/513, last amended by S.S.I. 2007/276.

- (b) in the text following paragraph (c) for “Schedule 8” there shall be substituted “Schedule 9” and for “Government of Wales Act 1998”(6) there shall be substituted “Government of Wales Act 2006”; and
- (c) for paragraph (c) of the definition of “relevant authority” there shall be substituted–
  - “(c) in the case of a devolution issue within the meaning of Schedule 9, the Counsel General to the Welsh Assembly Government.”
- (3) In rule 40.2 (raising devolution issues: proceedings on indictment)–
  - (a) in paragraph (2) for “Schedule 8” there shall be substituted “Schedule 9”;
  - (b) after paragraph (2) there shall be inserted–
    - “(2A) Where, after determination of the devolution issue at first instance, a party lodges a note of appeal seeking to review that determination, the party shall, unless the Advocate General is already a party to the proceedings, at the same time intimate that note of appeal to the Advocate General together with a notice in Form 40.2A-A.”; and
  - (c) in paragraph (3) for “Schedule 8” there shall be substituted “Schedule 9”.
- (4) In rule 40.3 (raising devolution issues: summary proceedings)–
  - (a) in paragraph (2) for “Schedule 8” there shall be substituted “Schedule 9”;
  - (b) after paragraph (3) there shall be inserted–
    - “(3A) Where, after determination of the devolution issue at first instance, a party applies for a stated case or lodges a note of appeal seeking to review that determination, the party shall, unless the Advocate General is already a party to the proceedings, at the same time intimate that application for a stated case or note of appeal to the Advocate General together with a notice in Form 40.3A-A.”; and
  - (c) in paragraph (4) for “Schedule 8” there shall be substituted “Schedule 9”.
- (5) In rule 40.4 (raising devolution issues: other criminal proceedings)–
  - (a) in paragraph (1) after “proceedings”, where last occurring, there shall be inserted “, including bills of advocacy, bills of suspension and petitions to the *nobile officium*”;
  - (b) in paragraph (3) for “Schedule 8” there shall be substituted “Schedule 9”;
  - (c) after paragraph (3) there shall be inserted–
    - “(3A) Where, after determination of the devolution issue at first instance, a party lodges a note of appeal seeking to review that determination, the party shall, unless the Advocate General is already a party to the proceedings, at the same time intimate that note of appeal to the Advocate General together with a notice in Form 40.4A-A.”; and
  - (d) in paragraph (4) for “Schedule 8” there shall be substituted “Schedule 9”.
- (6) In sub-paragraph (a) of paragraph (2) of rule 40.5 (time for raising devolution issue) for “Schedule 8” there shall be substituted “Schedule 9”.
- (7) In rule 40.6 (specification of the devolution issue) for “Schedule 8” there shall be substituted “Schedule 9”.
- (8) In rule 40.7 (reference of devolution issue to the High Court)–
  - (a) in paragraph (1) for “Schedule 8” there shall be substituted “Schedule 9”; and
  - (b) after paragraph (1) there shall be inserted the following:–
    - “(1A) The clerk of the court that has decided to make the reference shall, not later than seven days after the date of the decision to make the reference, give written notice of the

decision in Form 40.7 to the relevant authority, unless the relevant authority is already a party to the proceedings.”.

(9) In rule 40.9 (reference of devolution issue to Judicial Committee)–

- (a) in paragraph (1)(a) for “Schedule 8” there shall be substituted “Schedule 9”; and
- (b) in paragraph (1)(b) for “paragraph 30(1) of Schedule 8” there shall be substituted “paragraph 29(1) of Schedule 9”.

(10) In rule 40.11 (procedure following disposal of appeal by Judicial Committee) for “Schedule 8” there shall be substituted “Schedule 9”.

(11) For sub-paragraph (c) of paragraph (1) of rule 40.12 (orders mitigating the effect of certain decisions) there shall be substituted–

“(c) section 153 of the Government of Wales Act 2006”.

(12) In the Appendix–

- (a) in paragraph 2 of Form 40.2A for “Schedule 8 to the Government of Wales Act 1998” there shall be substituted “Schedule 9 to the Government of Wales Act 2006”;
- (b) after Form 40.2A there shall be inserted Form 40.2A-A set out in the Schedule to this Act of Adjournal;
- (c) In paragraph 2 of Form 40.3A for “Schedule 8 to the Government of Wales Act 1998” there shall be substituted “Schedule 9 to the Government of Wales Act 2006”;
- (d) after Form 40.3A there shall be inserted Form 40.3A-A set out in the Schedule to this Act of Adjournal;
- (e) In paragraph 2 of Form 40.4A for “Schedule 8 to the Government of Wales Act 1998” there shall be substituted “Schedule 9 to the Government of Wales Act 2006”;
- (f) after Form 40.4A there shall be inserted Form 40.4A-A set out in the Schedule to this Act of Adjournal;
- (g) after Form 40.4B there shall be inserted Form 40.7 set out in the Schedule to this Act of Adjournal; and
- (h) In Form 40.12 the title becomes “*Form of intimation to a relevant authority that the court is considering making an order under [section 102 of the Scotland Act 1998/section 81 of the Northern Ireland Act 1998/section 153 of the Government of Wales Act 2006]*”.

Edinburgh  
20th July 2007

*A C HAMILTON*  
Lord Justice General I.P.D.

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

SCHEDULE

Paragraph 2(12)

FORM 40.2A-A

Rule 40.2A

**Form of notice to Advocate General of appeal in relation to a devolution issue**

IN THE HIGH COURT OF JUSTICIARY

[or IN THE SHERIFF COURT]

AT

(place)

To: (name and address of Advocate General)

Name of appellant:

Date:

TAKE NOTICE:

1. That on (*date*) the High Court of Justiciary [*or the sheriff court*] at (*place*) determined a devolution issue intimated to you on (*specify date of intimation*).
2. That the appellant appeals against that decision.
3. A copy of the note of appeal is enclosed.

(Signed)

Solicitor for appellant

FORM 40.3A-A

Rule 40.3A

**Form of notice to Advocate General of appeal in relation to a devolution issue**

IN THE SHERIFF COURT

[or IN THE DISTRICT COURT]

AT

(place)

To: (name and address of Advocate General)

Name of appellant:

Date:

TAKE NOTICE:

1. That on (date) the Sheriff Court [or the District Court] at (place) determined a devolution issue intimated to you on (specify date of intimation).
2. That the appellant appeals against that decision.
3. A copy of the application for a stated case [or note of appeal] is enclosed.

(Signed)

Solicitor for appellant

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FORM 40.4A-A

Rule 40.4A

**Form of notice to Advocate General of appeal in relation to a devolution issue**

IN THE HIGH COURT OF JUSTICIARY

[*or* IN THE SHERIFF COURT]

[*or* IN THE DISTRICT COURT]

AT

(*place*)

To: (name and address of Advocate General)

Name of appellant:

Date:

TAKE NOTICE:

1. That on (*date*) the High Court of Justiciary [*or* the sheriff court] [*or* the District Court] at (*place*) determined a devolution issue intimated to you on (*specify date of intimation*).
2. That the appellant appeals against that decision.
3. A copy of the note of appeal [*or specify*] is enclosed.

(*Signed*)

Solicitor for appellant

Form 40.7

Rule 40.7

**Form of notice to relevant authority of reference of devolution issue to High Court of Justiciary**

IN THE HIGH COURT OF JUSTICIARY

[or IN THE SHERIFF COURT]

[or IN THE DISTRICT COURT]

AT

(place)

To: (name and address of relevant authority)

Name of appellant:

Date:

TAKE NOTICE:

1. That on *(date)* the High Court of Justiciary [or the sheriff court] [or the District Court] at *(place)* decided to refer a devolution issue to the High Court of Justiciary under paragraph 9 of Schedule 6 to the Scotland Act 1998 [or paragraph 27 of Schedule 10 to the Northern Ireland Act 1998] [or paragraph 17 of Schedule 9 to the Government of Wales Act 2006].
2. A copy of the order of the court is enclosed.

*(Signed)*

Clerk of Court

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**EXPLANATORY NOTE**

*(This note is not part of the Act of Adjournal)*

This Act of Adjournal amends the Act of Adjournal (Criminal Procedure Rules) 1996 as follows:

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- (a) the references to Schedule 8 to the Government of Wales Act 1998 are changed to Schedule 9 to the Government of Wales Act 2006;
- (b) the references to the “Government of Wales Act 1998” are changed to the “Government of Wales Act 2006”;
- (c) the reference to the “National Assembly for Wales” is changed to the “Counsel General to the Welsh Assembly Government”;
- (d) provision is made where a party applies for a stated case or lodges a note of appeal in proceedings where a devolution issue has been previously raised for intimation of the note of appeal to the Advocate General and provision is made for a form of intimation;
- (e) rule 40.4 is amended to specifically include petitions to the *nobile officium*, bills of suspension and bills of advocacy;
- (f) provision is made for the clerk of court to give notice to the relevant authority of a reference of a devolution issue to the High Court not later than 7 days from the date it was made and a form of notice is provided;
- (g) the references to paragraph 30(1) of Schedule 8 of the Government of Wales Act are changed to paragraph 29(1) of Schedule 9 to the Government of Wales Act 2006; and
- (h) the references to section 110 of the Government of Wales Act 1998 are changed to section 153 of the Government of Wales Act 2006.