

SCHEDULES

SCHEDULE 9

Section 149

DEVOLUTION ISSUES

PART 1

PRELIMINARY

- 1 (1) In this Schedule “devolution issue” means—
- (a) a question whether an Assembly Measure or Act of the Assembly, or any provision of an Assembly Measure or Act of the Assembly, is within the Assembly’s legislative competence,
 - (b) a question whether any function (being a function which any person has purported, or is proposing, to exercise) is exercisable by the Welsh Ministers, the First Minister or the Counsel General,
 - (c) a question whether the purported or proposed exercise of a function by the Welsh Ministers, the First Minister or the Counsel General is, or would be, within the powers of the Welsh Ministers, the First Minister or the Counsel General (including a question whether a purported or proposed exercise of a function is, or would be, outside those powers by virtue of section 80(8) or 81(1)),
 - (d) a question whether there has been any failure to comply with a duty imposed on the Welsh Ministers, the First Minister or the Counsel General (including any obligation imposed by virtue of section 80(1) or (7)), or
 - (e) a question of whether a failure to act by the Welsh Ministers, the First Minister or the Counsel General is incompatible with any of the Convention rights.
- (2) In this Schedule “civil proceedings” means proceedings other than criminal proceedings.
- 2 A devolution issue is not to 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 2

PROCEEDINGS IN ENGLAND AND WALES

Application of Part 2

- 3 This Part applies in relation to devolution issues in proceedings in England and Wales.

Status: This is the original version (as it was originally enacted).

Institution of proceedings

- 4 (1) Proceedings for the determination of a devolution issue may be instituted by the Attorney General or the Counsel General.
- (2) The Counsel General may defend any such proceedings instituted by the Attorney General.
- (3) This paragraph does not limit any power to institute or defend proceedings exercisable apart from this paragraph by any person.

Notice of devolution issue

- 5 (1) A court or tribunal must order notice of any devolution issue which arises in any proceedings before it to be given to the Attorney General and the Counsel General (unless a party to the proceedings).
- (2) A person to whom notice is given in pursuance of sub-paragraph (1) 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

- 6 A magistrates' court may refer any devolution issue which arises in civil proceedings before it to the High Court.
- 7 (1) A court may refer any devolution issue which arises in civil proceedings before it to the Court of Appeal.
- (2) Sub-paragraph (1) does not apply—
- (a) to a magistrates' court, the Court of Appeal or the Supreme Court, or
 - (b) to the High Court if the devolution issue arises in proceedings on a reference under paragraph 6.
- 8 A tribunal from which there is no appeal must refer any devolution issue which arises in proceedings before it to the Court of Appeal; and any other tribunal may make such a reference.
- 9 A court, other than the Court of Appeal or the Supreme Court, 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 Supreme Court

- 10 The Court of Appeal may refer any devolution issue which arises in proceedings before it (otherwise than on a reference under paragraph 7, 8 or 9) to the Supreme Court.

Appeals from superior courts to Supreme Court

- 11 An appeal against a determination of a devolution issue by the High Court or the Court of Appeal on a reference under paragraph 6, 7, 8 or 9 lies to the Supreme Court but only—
- (a) with permission of the court from which the appeal lies, or
 - (b) failing such permission, with permission of the Supreme Court.

PART 3

PROCEEDINGS IN SCOTLAND

Application of Part 3

- 12 This Part applies in relation to devolution issues in proceedings in Scotland.

Institution of proceedings

- 13 (1) Proceedings for the determination of a devolution issue may be instituted by the Advocate General for Scotland.
- (2) The Counsel General may defend any such proceedings instituted by the Advocate General for Scotland.
- (3) This paragraph does not limit any power to institute or defend proceedings exercisable apart from this paragraph by any person.

Intimation of devolution issue

- 14 (1) A court or tribunal must order intimation of any devolution issue which arises in any proceedings before it to be given to the Advocate General for Scotland and the Counsel General (unless a party to the proceedings).
- (2) A person to whom notice is given in pursuance of sub-paragraph (1) 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

- 15 A court, other than any court consisting of three or more judges of the Court of Session or the Supreme Court, may refer any devolution issue which arises in civil proceedings before it to the Inner House of the Court of Session.
- 16 A tribunal from which there is no appeal must 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.
- 17 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 Supreme Court

- 18 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 15 or 16) to the Supreme Court.
- 19 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 17) to the Supreme Court.

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

Appeals from superior courts to Supreme Court

- 20 An appeal against a determination of a devolution issue by the Inner House of the Court of Session on a reference under paragraph 15 or 16 lies to the Supreme Court.
- 21 An appeal against a determination of a devolution issue by—
- (a) a court consisting of two or more judges of the High Court of Justiciary (whether in the ordinary course of proceedings or on a reference under paragraph 17), or
 - (b) a court consisting of three or more judges of the Court of Session from which there is no appeal to the Supreme Court apart from this paragraph, lies to the Supreme Court, but only with permission of the court from which the appeal lies or, failing such permission, with permission of the Supreme Court.

PART 4

PROCEEDINGS IN NORTHERN IRELAND

Application of Part 4

- 22 This Part applies in relation to devolution issues in proceedings in Northern Ireland.

Institution of proceedings

- 23 (1) Proceedings for the determination of a devolution issue may be instituted by the Advocate General for Northern Ireland.
- (2) The Counsel General may defend any such proceedings instituted by the Advocate General for Northern Ireland.
- (3) This paragraph does not limit any power to institute or defend proceedings exercisable apart from this paragraph by any person.

Notice of devolution issue

- 24 (1) A court or tribunal must order notice of any devolution issue which arises in any proceedings before it to be given to the Advocate General for Northern Ireland and the Counsel General (unless a party to the proceedings).
- (2) A person to whom notice is given in pursuance of sub-paragraph (1) 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

- 25 A court, other than the Court of Appeal in Northern Ireland or the Supreme Court, may refer any devolution issue which arises in any proceedings before it to the Court of Appeal in Northern Ireland.
- 26 A tribunal from which there is no appeal must refer any devolution issue which arises in 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 Supreme Court

- 27 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 25 or 26) to the Supreme Court.

Appeals from Court of Appeal to Supreme Court

- 28 An appeal against a determination of a devolution issue by the Court of Appeal in Northern Ireland on a reference under paragraph 25 or 26 lies to the Supreme Court but only—
- (a) with permission of the Court of Appeal in Northern Ireland, or
 - (b) failing such permission, with permission of the Supreme Court.

PART 5

GENERAL

Direct references to Supreme Court

- 29 (1) The relevant officer may require any court or tribunal to refer to the Supreme Court any devolution issue which has arisen in any proceedings before it to which that person is a party.
- (2) In sub-paragraph (1) “the relevant officer” means—
- (a) in relation to proceedings in England and Wales, the Attorney General or the Counsel General,
 - (b) in relation to proceedings in Scotland, the Advocate General for Scotland, and
 - (c) in relation to proceedings in Northern Ireland, the Advocate General for Northern Ireland.
- 30 (1) The Attorney General or the Counsel General may refer to the Supreme Court any devolution issue which is not the subject of proceedings.
- (2) Where a reference is made under sub-paragraph (1) by the Attorney General in relation to a devolution issue which relates to the proposed exercise of a function by the Welsh Ministers, the First Minister or the Counsel General—
- (a) the Attorney General must notify the Counsel General of that fact, and
 - (b) the function must not be exercised by the Welsh Ministers, the First Minister or the Counsel General in the manner proposed during the period beginning with the receipt of the notification and ending with the reference being decided or otherwise disposed of.

Costs

- 31 (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).

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

- (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 5, 14 or 24.

Procedure of courts and tribunals

- 32 Any power to make provision for regulating the procedure before any court or tribunal includes 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.

References to be for decision

- 33 Any function conferred by this Schedule to refer a devolution issue to a court is to be construed as a function of referring the issue to the court for decision.