
STATUTORY INSTRUMENTS

1999 No. 1346 (S.101)

**HIGH COURT OF JUSTICIARY, SCOTLAND
SHERIFF COURT SCOTLAND
SUMMARY JURISDICTION, SCOTLAND**

Act of Adjournal (Devolution Issues Rules) 1999

Made - - - - *4th May 1999*
Coming into force - - *6th May 1999*

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⁽¹⁾ paragraph 37 of Schedule 6 to the Scotland Act 1998⁽²⁾ paragraph 38 of Schedule 10 to the Northern Ireland Act 1998⁽³⁾ and paragraph 36 of Schedule 8 to the Government of Wales Act 1998⁽⁴⁾ 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 (Devolution Issues Rules) 1999 and shall come into force on 6th May 1999.

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

Amendment of Criminal Procedure Rules

2.—(1) The Act of Adjournal (Criminal Procedure Rules) 1996 is amended as follows.

(2) After Chapter 39 (Proceedings under the Criminal Law (Consolidation) (Scotland) Act) there is inserted the following new Chapter—

“Chapter 40
DEVOLUTION ISSUES

Interpretation of this Chapter

40.1. –

(1) 1995 c. 46.
(2) 1998 c. 46.
(3) 1998 c. 47.
(4) 1998 c. 38.

(1) In this Chapter–

“Advocate General” means the Advocate General for Scotland;

“devolution issue” means a devolution issue within the meaning of–

- (a) Schedule 6 to the Scotland Act 1998;
- (b) Schedule 10 to the Northern Ireland Act 1998; or
- (c) Schedule 8 to the Government of Wales Act 1998,

and any reference to Schedule 6, Schedule 10 or Schedule 8 is a reference to that Schedule to, respectively, the Scotland Act 1998, the Northern Ireland Act 1998 and the Government of Wales Act 1998;

“the Judicial Committee” means the Judicial Committee of the Privy Council;

“relevant authority” means the Advocate General and–

- (a) in the case of a devolution issue within the meaning of Schedule 6, the Lord Advocate;
- (b) in the case of a devolution issue within the meaning of Schedule 10, the Attorney General for Northern Ireland, and the First Minister and deputy First Minister acting jointly;
- (c) in the case of a devolution issue within the meaning of Schedule 8, the National Assembly for Wales.

(2) For the purposes of this Chapter, a trial shall be taken to commence–

- (a) in proceedings on indictment, when the oath is administered to the jury;
- (b) in summary proceedings, when the first witness is sworn.

(3) Rule 2.1 (service on the Crown) does not apply to any requirement to serve any document on or give any notice or intimation of any matter to the Lord Advocate in pursuance of this Chapter.

Raising devolution issues: proceedings on indictment

40.2. –

(1) Where a party to proceedings on indictment proposes to raise a devolution issue he shall, not later than 7 days after the date of service of the indictment, give written notice of his intention to do so in Form 40.2A to the clerk of the court in which the trial is to take place; and a copy of the notice shall, at the same time, be served on the other parties to the proceedings and on the relevant authority.

(2) The copy notice served on the relevant authority under paragraph (1) shall be treated as intimation of the devolution issue arising in the proceedings as mentioned in paragraph 5 of Schedule 6 or, as the case may be, paragraph 23 of Schedule 10 or paragraph 14(1) of Schedule 8, unless the court determines that no devolution issue arises in the proceedings.

(3) Where a relevant authority wishes to become a party to the proceedings as mentioned in paragraph 6 of Schedule 6 or, as the case may be, paragraph 24 of Schedule 10 or paragraph 14(2) of Schedule 8, he shall, not later than 7 days after receipt of the notice served under paragraph (1), give notice in Form 40.2B to the clerk of the court in which the trial is to take place; and a copy of such notice shall be served on the Lord Advocate and every other party to the proceedings.

(4) A record of any notice given under paragraph (1) or (3) shall be made on the record copy of the indictment or in the record of the proceedings, as the case may be.

(5) This Rule is without prejudice to any right of or requirement upon any party to the proceedings to raise any matter or objection or to make any submission or application under section 72 of the Act of 1995.

Raising devolution issues: summary proceedings

40.3. –

(1) Where a party to summary proceedings proposes to raise a devolution issue he shall, before the accused or, where there is more than one accused, any accused is called upon to plead, give notice of his intention to raise the devolution issue in Form 40.3A to the clerk of court; and a copy of the notice shall, at the same time, be served on other parties to the proceedings and on the relevant authority.

(2) The copy notice served on the relevant authority under paragraph (1) shall be treated as intimation of the devolution issue arising in the proceedings as mentioned in paragraph 5 of Schedule 6 or, as the case may be, paragraph 23 of Schedule 10 or paragraph 14(1) of Schedule 8, unless the court determines that no devolution issue arises in the proceedings.

(3) Where notice is given under paragraph (1) the court, unless it determines that no devolution issue arises in the proceedings, shall adjourn the case under section 145 of the Act of 1995.

(4) Where a relevant authority wishes to become a party to the proceedings as mentioned in paragraph 6 of Schedule 6 or, as the case may be, paragraph 24 of Schedule 10 or paragraph 14(2) of Schedule 8, he shall, not later than 7 days after receipt of the notice served under paragraph (1), give notice to the clerk of court in Form 40.3B of his intention to do so: and he shall, at the same time, serve a copy of that notice on any other relevant authority and on every other party to the proceedings.

Raising devolution issues: other criminal proceedings

40.4. –

(1) This Rule applies to criminal proceedings which are not proceedings on indictment or summary proceedings.

(2) Where a party to proceedings to which this Rule applies proposes to raise a devolution issue he shall give notice of his intention to raise the devolution issue in Form 40.4A to the clerk of court; and a copy of the notice shall, at the same time, be served on the other parties to the proceedings and on the relevant authority.

(3) The copy notice served on the relevant authority under paragraph (2) shall be treated as intimation of the devolution issue arising in the proceedings as mentioned in paragraph 5 of Schedule 6 or, as the case may be, paragraph 23 of Schedule 10 or paragraph 14(1) of Schedule 8, unless the court determines that no devolution issue arises in the proceedings.

(4) Where a relevant authority wishes to become a party to the proceedings as mentioned in paragraph 6 of Schedule 6 or, as the case may be, paragraph 24 of Schedule 10 or paragraph 14(2) of Schedule 8, he shall, not later than 7 days after receipt of the notice served under paragraph (1), give notice to the clerk of court in Form 40.4B of his intention to do so: and he shall, at the same time, serve a copy of that notice on any other relevant authority and on every other party to the proceedings.

Time for raising devolution issue

40.5. –

(1) No party to criminal proceedings shall raise a devolution issue in those proceedings except as in accordance with Rule 40.2, 40.3 or 40.4, unless the court, on cause shown, otherwise determines.

(2) Where the court determines that a devolution issue may be raised as mentioned in paragraph (1), it shall make such orders as to the procedure to be followed as appear to it to be appropriate and, in particular, it shall make such orders—

- (a) as are necessary to ensure that intimation of the devolution issue is given in writing to the relevant authority for the purposes of paragraph 5 of Schedule 6 or, as the case may be, paragraph 23 of Schedule 10 or paragraph 14(1) of Schedule 8; and
- (b) as to the time in which any step is to be taken by any party in the proceedings.

Specification of devolution issue

40.6. The notice given under paragraph (1) of Rule 40.2 or 40.3 or paragraph (2) of Rule 40.4 shall specify the facts and circumstances and contentions of law on the basis of which it is alleged that a devolution issue arises in the proceedings in sufficient detail to enable the court to determine, for the purposes of paragraph 2 of Schedule 6 or, as the case may be, of Schedule 10 or Schedule 8, whether a devolution issue arises in the proceedings.

Reference of devolution issue to the High Court

40.7. –

(1) Where a court, other than a court consisting of two or more judges of the High Court of Justiciary, decides to refer a devolution issue to the High Court of Justiciary under paragraph 9 of Schedule 6 or, as the case may be, paragraph 27 of Schedule 10 or paragraph 17 of Schedule 8, the court shall—

- (a) pronounce an order giving directions to the parties about the manner and time in which the reference is to be drafted;
- (b) give its reasons for making the reference and cause those reasons to be recorded in the record or minutes of proceedings, as the case may be; and
- (c) continue the proceedings from time to time as necessary for the purpose of the reference.

(2) The reference—

- (a) shall then be adjusted at the sight of the court in such manner as the court may direct; and
- (b) after approval and the making of an appropriate order by the court shall (after the expiry of any period for appeal) be transmitted by the clerk of court to the Clerk of Justiciary with a certified copy of the record or minutes of proceedings, as the case may be, and, where applicable, a certified copy of the relevant indictment or complaint.

(3) Where the court determines that a devolution issue may be raised during a trial, the court shall not refer the devolution issue to the High Court but shall determine the issue itself.

Orders pending determination of devolution issue

40.8. –

(1) In any case where a devolution issue arises in criminal proceedings (including proceedings where there is a reference of a devolution issue to the High Court of Justiciary or the Judicial Committee), the court or, in the case of a reference or an appeal to the Judicial

Committee, the High Court of Justiciary may make such orders as it considers just and equitable in the circumstances pending the determination of the devolution issue, including—

- (a) postponing any diet, including a trial diet, fixed in the case;
- (b) making such order as it considers appropriate in relation to bail;
- (c) subject to paragraph (2), extending the period within which any step requires to be taken or event to have occurred.

(2) An order under paragraph (1)(c) extending a period which may be extended under section 65 or 147 of the Act of 1995 may be made only by a court which has power to do so under that section; and, for the purposes of that section, the fact that a devolution issue has been raised by the prosecutor shall not, without more, be treated as fault on the part of the prosecutor.

Reference of devolution issue to Judicial Committee

40.9. –

(1) This Rule applies where—

- (a) a court consisting of two or more judges of the High Court of Justiciary decides to refer a devolution issue to the Judicial Committee under paragraph 11 of Schedule 6 or, as the case may be, paragraph 29 of Schedule 10 or paragraph 19 of Schedule 8; or
- (b) a court is required by a relevant authority to refer a devolution issue to the Judicial Committee as mentioned in paragraph 33 of Schedule 6 or, as the case may be, paragraph 33 of Schedule 10 or paragraph 30(1) of Schedule 8.

(2) The court shall—

- (a) pronounce an order giving directions to the parties about the manner and time in which the reference is to be drafted;
- (b) give its reasons for making the reference and cause those reasons to be recorded in the record or minutes of proceedings, as the case may be; and
- (c) continue the proceedings from time to time as necessary for the purpose of the reference.

(3) The reference shall include such matters as may be required by Rule 2.9 of the Judicial Committee (Devolution Issues) Rules 1999(5) and—

- (a) shall be adjusted at the sight of the court in such manner as may be so directed; and
- (b) after approval and the making of an appropriate order by the court, shall be transmitted by the clerk of court to the Registrar of the Judicial Committee with a certified copy of the record or minutes of proceedings, as the case may be, and, where applicable, a certified copy of the relevant indictment or complaint.

Procedure on receipt of determination of devolution issue

40.10. –

(1) Where, on a reference of a devolution issue the High Court of Justiciary or, as the case may be, the Judicial Committee has determined the issue and the determination has been received by the clerk of the court which made the reference, the determination shall be laid before the court.

(2) On the determination being laid before the court, the court shall then give directions as to further procedure, which directions shall be intimated by the clerk with a copy of the determination to each of the parties to the proceedings.

Procedure following disposal of appeal by Judicial Committee

40.11. The High Court of Justiciary shall, on the application of any party to the proceedings, fix a diet for the purpose of disposing of any matter in consequence of a judgment of the Judicial Committee on an appeal under paragraph 13(a) of Schedule 6 or, as the case may be, paragraph 31(a) of Schedule 10 or paragraph 21(a) of Schedule 8.

Orders mitigating the effect of certain decisions

40.12. –

(1) In any proceedings where the court is considering making an order under–

- (a) section 102 of the Scotland Act 1998;
- (b) section 81 of the Northern Ireland Act 1998; or
- (c) section 110 of the Government of Wales Act 1998,

(power of the court to vary or suspend the effect of certain decisions), the court shall order intimation of the fact to be made by the clerk of court to every person to whom intimation is required to be given by that section.

(2) Intimation as mentioned in paragraph (1) above shall–

- (a) be made forthwith in Form 40.12 by first class recorded delivery post; and
- (b) specify 7 days, or such other period as the court thinks fit, as the period within which a person may give notice of his intention to take part in the proceedings.”

(3) In the Appendix, after Form 38 there is inserted the following Forms–

“Form 40.2A

Form of minute of notice of intention to raise a devolution issue

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, LORD JUSTICE-CLERK AND LORDS COMMISSIONERS OF JUSTICIARY

[UNTO THE HONOURABLE THE SHERIFF OF (*name of sheriffdom*)

AT (*place*)]

MINUTE

by

[A.B.] (*address*)

[*or* Prisoner in the Prison of (*place*)]

HUMBLY SHEWETH:

1. That [*name of accused*] has been indicted at the instance of Her Majesty’s Advocate for trial in the High Court of Justiciary sitting at (*place*) on (*date*) [*or* sheriff court at (*place*) on (*date*)] with a first diet on (*date*).

2. That [A.B.] intends to raise a devolution issue within the meaning of Schedule 6 to the Scotland Act 1998/Schedule 10 to the Northern Ireland Act 1998/Schedule 8 to the Government of Wales Act 1998 on the following grounds (*here specify the facts and circumstances and contentions of law which are alleged to give rise to the devolution issue*)

3. That a copy of this minute has been duly intimated to Her Majesty’s Advocate [and to (*name(s) of co-accused*)] and to the relevant authority within the meaning of Rule 40.1 conform to execution[s] attached to this minute.

MAY IT THEREFORE PLEASE YOUR LORDSHIP[S]:
to order that there be a diet and to assign a date for that diet;
IN RESPECT WHEREOF
[Solicitor for minuter]
(Address and telephone number of solicitor)
(Place and date)

Form 40.2B

Form of notice of intervention by relevant authority

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, LORD JUSTICE-CLERK AND LORDS COMMISSIONERS OF JUSTICIARY

[UNTO THE HONOURABLE THE SHERIFF OF (*name of sheriffdom*)

AT (*place*)]

NOTICE

by

[C.D.] (*address*)

HUMBLY SHEWETH:

1. That [*name of accused*] has been indicted at the instance of Her Majesty's Advocate for trial in the High Court of Justiciary sitting at (*place*) on (*date*) [or sheriff court at (*place*) on (*date*) with a first diet on (*date*)]

2. That [C. D.] (*here specify the name and title of the relevant authority and the fact of the intimation of the devolution issue*) intends to take part in the proceedings so far as they relate to the devolution issue

3. That a copy of this notice has been duly intimated to Her Majesty's Advocate [and to said (*name(s) of accused*)] and to any other relevant authority within the meaning of Rule 40.1 conform to execution[s] attached to this minute.

IN RESPECT WHEREOF

[Solicitor for the relevant authority]

(Address and telephone number of solicitor)

(Place and date)

Form 40.3A

Form of minute of notice of intention to raise a devolution issue

UNTO THE HONOURABLE THE SHERIFF OF (*name of sheriffdom*)

AT (*place*)

[or UNTO THE JUSTICES in the DISTRICT COURT OF (*name of district*)

AT (*place*)]

MINUTE

by

[E.F.] (*address*)

[or Prisoner in the Prison of (*place*)]

HUMBLY SHEWETH:

1. That [*name of accused*] has been charged at the instance of [G. H.] procurator fiscal at (*place*) with the crime [*or offence*] of (*specify*) and a diet is fixed for (*specify date*).

2. That [E.F.] intends to raise a devolution issue within the meaning of Schedule 6 to the Scotland Act 1998/Schedule 10 to the Northern Ireland Act 1998/Schedule 8 to the Government of Wales Act 1998 on the following grounds (*here specify the facts and circumstances and contentions of law which are alleged to give rise to the devolution issue*).

3. That a copy of this minute has been duly intimated to the said G.H., procurator fiscal [and to said (*name(s) of co-accused*)] and to the relevant authority within the meaning of Rule 40.1 conform to execution[s] attached to this minute.

MAY IT THEREFORE PLEASE YOUR LORDSHIP [or THE COURT]:

to order that there be a diet to determine the devolution issue and to assign a date for that diet;

IN RESPECT WHEREOF

[Solicitor for minuter]

(*Address and telephone number of solicitor*)

(*Place and date*)

Form 40.3B

Form of notice of intervention by relevant authority

UNTO THE HONOURABLE THE SHERIFF OF (*name of sheriffdom*)

AT (*place*)

[or UNTO THE JUSTICES in the DISTRICT COURT OF (*name of district*) AT (*place*)]

NOTICE

by

[J.K.] (*address*)

HUMBLY SHEWETH:

1. That [*name of accused*] has been charged at the instance of [G.H.], procurator fiscal at (*place*) with the crime [*or offence*] of (*specify*) and a diet has been fixed for (*specify date*).

2. That [J.K.] (*here specify the name and title of the relevant authority and the fact of the intimation of the devolution issue*) intends to take part in the proceedings so far as they relate to the devolution issue.

3. That a copy of this notice has been duly intimated to the said G. H., procurator fiscal [and to said (*name(s) of accused*)] and to any other relevant authority within the meaning of Rule 40.1 conform to execution[s] attached to this minute.

IN RESPECT WHEREOF

[Solicitor for the relevant authority]

(*Address and telephone number of solicitor*)

(*Place and date*)

Form 40.4A

Form of minute of notice of intention to raise a devolution issue

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, LORD JUSTICE-CLERK AND LORDS COMMISSIONERS OF JUSTICIARY

[or UNTO THE HONOURABLE THE SHERIFF OF (*name of sheriffdom*)

AT (*place*)]

[or UNTO THE JUSTICES in the DISTRICT COURT OF (*name of district*) AT (*place*)]

MINUTE

by

[L.M.] (*address*)

[or Prisoner in the Prison of (*place*)]

HUMBLY SHEWETH:

1. That (*here specify the nature of the proceedings, the names of the parties and the date of any diet fixed*).

2. That [L.M.] intends to raise a devolution issue within the meaning of Schedule 6 to the Scotland Act 1998/Schedule 10 to the Northern Ireland Act 1998/Schedule 8 to the Government of Wales Act 1998 on the following grounds (*here specify the facts and circumstances and contentions of law which are alleged to give rise to the devolution issue*)

3. That a copy of this minute has been duly intimated to Her Majesty's Advocate [*and to (names of any other parties to the proceedings)*] and to the relevant authority within the meaning of Rule 40.1 conform to execution[s] attached to this minute.

MAY IT THEREFORE PLEASE YOUR LORDSHIP[S] [OR THE COURT]:

to order that there be a diet and to assign a date for that diet;

IN RESPECT WHEREOF

[Solicitor for minuter]

(*Address and telephone number of solicitor*)

(*Place and date*)

Form 40.4B

Form of notice of intervention by relevant authority

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, LORD JUSTICE-CLERK AND LORDS COMMISSIONERS OF JUSTICIARY

[UNTO THE HONOURABLE THE SHERIFF OF (*name of sheriffdom*)

AT (*place*)]

[or UNTO THE JUSTICES in the DISTRICT COURT OF (*name of district*) AT (*place*)]

NOTICE

by

[N.O.] (*address*)

HUMBLY SHEWETH:

1. That (*here specify the nature of the proceedings, the names of the parties and the date of any diet fixed*).

2. That [N.O.] (*here specify the name and title of the relevant authority and the fact of the intimation of the devolution issue*) intends to take part in the proceedings so far as they relate to the devolution issue.

3. That a copy of this notice has been duly intimated to Her Majesty's Advocate [and to said (*name(s) of other parties*)] and to any other relevant authority within the meaning of Rule 40.1 conform to execution[s] attached to this minute.

IN RESPECT WHEREOF

[Solicitor for the relevant authority]

(*Address and telephone number of solicitor*)

(*Place and date*)

Form 40.12

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 110 of the Government of Wales Act 1998]

To: (*name and address of relevant authority*)

1. You are given notice that in criminal proceedings in the [High Court of Justiciary/Sheriff/District Court at (*place*)], at the instance of (*name and title of prosecutor*) against (*name of accused*) the court has decided [that an Act/provision of an Act of the Scottish Parliament is not within the legislative competence of the Parliament] [a member of the Scottish Executive does not have the power to make, confirm or approve a provision of subordinate legislation he has purported to make, confirm or approve]. A copy of the relevant decision is enclosed.

2. The court is considering whether to make an order [removing or limiting the retrospective effect of the decision/suspending the effect of the decision to allow the defect to be corrected].

3. If you wish to take part as a party to the proceedings so far as they relate to the making of the order mentioned in paragraph 2 you must lodge with (*title and address of clerk of court*) a notice in writing stating that you intend to take part as a party in the proceedings. The notice must be lodged within 7 days of (*insert date on which intimation was given*).

Date (*insert date*)

(*Signed*)

Clerk of Court"

Edinburgh,
4 May 1999.

Rodger of Earlsferry
Lord Justice General I.P.D.

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 by adding a new Chapter 40 providing rules to regulate the procedure where a devolution issue (within the meaning of Schedule 6 to the Scotland Act 1998, Schedule 10 to the Northern Ireland Act 1998 and Schedule 8 to the Government of Wales Act 1998) arises in any proceedings.

It provides, in particular, for the time when a devolution issue should be raised. It also provides for time limits for intimation to and response by the relevant authority (in most cases the Lord Advocate and the Advocate General for Scotland) where a devolution issue is raised in criminal proceedings.

It regulates the procedure for making references of devolution issues to the High Court of Justiciary and to the Judicial Committee of the Privy Council. It enables the making of orders pending the determination of such a reference.

It enables the High Court of Justiciary to dispose of any matter in consequence of a judgment of the Judicial Committee on an appeal.

It regulates the giving of notice to those entitled to intervene where the court is considering making an order under section 102 of the Scotland Act or the corresponding provisions of the Northern Ireland and Wales legislation mitigating the effect of a decision that a provision of devolved legislation is invalid.