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STATUTORY INSTRUMENTS

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**1999 No. 1347 (S.102)**

**SHERIFF COURT, SCOTLAND**

**Act of Sederunt (Proceedings for Determination  
of Devolution Issues Rules) 1999**

*Made* - - - - *5th May 1999*

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

The Lords of Council and Session, under and by virtue of the powers conferred on them by section 32 of the Sheriff Courts (Scotland) Act 1971<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 36 of Schedule 8 to the Government of Wales Act 1998<sup>(4)</sup> and of all other powers enabling them in that behalf, having approved, draft rules submitted to them by the Sheriff Court Rules Council in accordance with section 34 of the Sheriff Courts (Scotland) Act 1971, do hereby enact and declare:

**Citation**

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Proceedings for Determination of Devolution Issues Rules) 1999 and shall come into force on 6th May 1999.

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

**Interpretation**

2.—(1) In this Act of Sederunt—

“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;

“initiating document” means the initial writ, summons, petition or other document by which the proceedings are initiated;

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(1) 1971 c. 58. Section 32 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), Schedule 2, paragraph 12, the Civil Evidence (Scotland) Act 1988 (c. 32), section 2(4) and the Children (Scotland) Act 1995 (c. 36), Schedule 4, paragraph 18(2).

(2) 1998 c. 46.

(3) 1998 c. 47.

(4) 1998 c. 38.

“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, the First Minister and the deputy First Minister;
- (c) in the case of a devolution issue within the meaning of Schedule 8, the National Assembly for Wales.

(2) Any reference in this Act of Sederunt to a numbered Form shall be construed as a reference to the Form so numbered in Schedule 1 to this Act of Sederunt, and any reference to a rule shall be a reference to the rule so numbered in this Act of Sederunt.

### **Proceedings for determination of a devolution issue**

3. Where the initiating document contains an averment or crave which raises a devolution issue, the initiating document shall include a crave for warrant to intimate it to the relevant authority, unless he is a party to the action.

### **Time for raising devolution issue**

4. It shall not be competent for a party to any proceedings to raise a devolution issue after proof is commenced, unless the sheriff, on cause shown, otherwise determines.

### **Specification of devolution issue**

5.—(1) Any party raising a devolution issue shall specify—

- (a) where he initiates the action, in the initiating document;
- (b) in the written defences or answers; or
- (c) in any other case, in Form 1,

the facts and circumstances and contentions of law on the basis of which it is alleged that the devolution issue arises in sufficient detail to enable the sheriff to determine whether such an issue arises in the proceedings.

(2) Where a party wishes to raise a devolution issue after lodging any writ mentioned in paragraph (1) above, he shall do so—

- (a) by way of adjustment or minute of amendment; or
- (b) in proceedings in which there is no procedure for adjustment or amendment, in Form 1,

so as to provide specification of the matters mentioned in that paragraph.

### **Intimation of devolution issue**

6.—(1) Intimation of a devolution issue shall be given to the relevant authority (unless he is a party to the proceedings) in accordance with this rule.

(2) Where the devolution issue is raised in the initiating document, the sheriff shall order intimation of the devolution issue as craved in the warrant for service.

(3) In any case other than that described in paragraph (2) above, the party raising the devolution issue shall lodge a motion or incidental application, as the case may be, craving a warrant for intimation of the devolution issue on the relevant authority, and on considering the motion or incidental application, where it appears to the sheriff that a devolution issue arises, he shall order such intimation of the devolution issue.

(4) Where intimation is ordered in accordance with paragraphs (2) or (3) above, such intimation shall be in Form 2 and be made in such manner as the sheriff considers appropriate in the circumstances.

(5) The intimation of a devolution issue shall specify 14 days, or such other period as the sheriff thinks fit, as the period within which the relevant authority may enter appearance as a party in the proceedings.

#### **Response to intimation of devolution issue**

7.—(1) This rule applies where the relevant authority receives intimation of a devolution issue.

(2) Where the relevant authority intends to enter an appearance as a party in the proceedings, he shall lodge a minute stating that he intends to do so.

(3) Upon receipt of the minute lodged in accordance with paragraph (2) above, the sheriff shall sist the relevant authority as a party to the action.

(4) Upon the relevant authority being sisted as a party in accordance with paragraph (3) above, the sheriff shall order the relevant authority to lodge a note of his written submissions in respect of the devolution issue specifying those matters mentioned in rule 5(1) within 7 days, or such other period as the sheriff thinks fit.

(5) A copy of the minute lodged in accordance with paragraph (2) above and a copy of any note lodged in accordance with paragraph (4) above shall, at the same time as lodging the minute or any note, be intimated by the party lodging such to all other parties in the proceedings.

(6) At any time after the note mentioned in paragraph (4) above has been lodged, the sheriff may regulate such further procedure in the proceedings as he thinks fit.

#### **Intimation under section 102 of the Scotland Act 1998, section 81 of the Northern Ireland Act 1998 or section 110 of the Government of Wales Act 1998**

8.—(1) This rule applies to orders made under—

- (a) section 102 of the Scotland Act 1998 (powers of courts or tribunals to vary retrospective decisions);
- (b) section 81 of the Northern Ireland Act 1998 (powers of courts or tribunals to vary retrospective decisions); or
- (c) section 110 of the Government of Wales Act 1998 (power to vary retrospective decisions).

(2) Where the sheriff is considering whether to make an order under any of the provisions mentioned in paragraph (1) above, he shall order intimation of that fact to be given to every person to whom intimation is required to be given by that provision.

(3) The intimation mentioned in paragraph (2) above shall—

- (a) be made forthwith by the sheriff clerk in Form 3 by first class recorded delivery post; and
- (b) specify 14 days, or such other period as the sheriff thinks fit, as the period within which a person may enter an appearance as a party in the proceedings so far as they relate to the making of the order.

#### **Response to intimation of order under rule 8**

9.—(1) This rule applies where a person receives intimation in accordance with rule 8.

(2) Where a person intends to enter an appearance as a party in the proceedings, he shall lodge a minute stating that he intends to do so.

(3) Upon receipt of the minute lodged in accordance with paragraph (2) above, the sheriff shall sist the person as a party to the action.

(4) Upon a person being sisted as a party in accordance with paragraph (3) above, the sheriff shall order the person to lodge a note of his written submissions in respect of the making of the order within 7 days, or such other period as the sheriff thinks fit.

(5) A copy of the minute lodged in accordance with paragraph (2) above and a copy of any note lodged in accordance with paragraph (4) above shall, at the same time as lodging the minute or any note, be intimated by the party lodging such to all other parties in the proceedings.

(6) At any time after the note mentioned in paragraph (4) above has been lodged, the sheriff may regulate such further procedure in the proceedings as he thinks fit.

### **Reference of devolution issue to Inner House of the Court of Session or Judicial Committee**

**10.**—(1) This rule applies where—

- (a) any reference of a devolution issue is made to the Inner House of the Court of Session; or
- (b) the sheriff is required by the relevant authority to refer a devolution issue to the Judicial Committee.

(2) Where a reference is made in accordance with paragraph (1) above, the sheriff shall pronounce an interlocutor giving directions about the manner and time in which the reference is to be drafted and adjusted.

(3) When the reference has been drafted and adjusted in accordance with paragraph (2) above, the sheriff shall sign the reference.

(4) The reference shall include such matters as are prescribed in Schedule 2 to this Act of Sederunt, and shall have annexed to it the interlocutor making the reference and any other order of the court in the cause.

(5) The sheriff clerk shall send a copy of the reference by first class recorded delivery post to—

- (a) the parties to the proceedings; and
- (b) the relevant authority (if he is not already a party) who may have a potential interest in the proceedings,

and shall certify on the back of the principal reference that a copy has been sent and to whom.

### **Sist of cause on reference to Inner House of the Court of Session or Judicial Committee**

**11.** On a reference being made in accordance with rule 10, the cause shall, unless the sheriff when making the reference otherwise orders, be sisted until the devolution issue has been determined.

### **Interim Orders**

**12.**—(1) Notwithstanding the reference of a devolution issue to the Inner House of the Court of Session or to the Judicial Committee in accordance with rule 10, the sheriff shall have power to make any interim order which a due regard to the interests of the parties may require.

(2) The sheriff may recall a sist made under rule 11 for the purpose of making the interim order mentioned in paragraph (1) above.

### **Transmission of reference**

**13.**—(1) The sheriff clerk shall forthwith transmit the principal copy of the reference—

- (a) to the Deputy Principal Clerk of the Court of Session; or

(b) together with seven copies, to the Registrar of the Judicial Committee, as the case may be.

(2) Unless the sheriff otherwise directs, the principal copy of the reference shall not be transmitted in accordance with paragraph (1) above, where an appeal against the making of the reference is pending.

(3) For the purpose of paragraph (2) above, an appeal shall be treated as pending—

- (a) until the expiry of the time for making that appeal; or
- (b) where an appeal has been made, until that appeal has been determined.

#### **Procedure following determination on reference or appeal**

**14.**—(1) This rule applies where either the Inner House of the Court of Session or the Judicial Committee have determined—

- (a) a devolution issue referred to them in accordance with rule 10; or
- (b) an appeal made to them.

(2) Upon receipt of the determination of the Inner House of the Court of Session or the Judicial Committee, as the case may be, the sheriff clerk shall forthwith place before the sheriff a copy of the determination and the court process.

(3) The sheriff may *ex proprio motu* or shall upon the lodging of a motion or incidental application by any of the parties to the proceedings, pronounce an interlocutor ordering such further procedure as may be required.

(4) Where the sheriff *ex proprio motu* pronounces an interlocutor in accordance with paragraph (3) above, the sheriff clerk shall forthwith intimate a copy of the interlocutor to all parties in the proceedings.

Edinburgh,  
5 May 1999.

*Rodger of Earlsferry*  
Lord President I.P.D.

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SCHEDULE 1

Rule 2(2)

Rules 5(1)(c) and 5(2)(b)

FORM 1

FORM OF SPECIFICATION OF DEVOLUTION ISSUE

SHERIFFDOM OF *(insert name of sheriffdom)*

AT *(insert place of sheriff court)*

Court Ref No.

In the action of

[A.B.] *(designation and address)*

Pursuer

against

[C.D.] *(designation and address)*

Defender

1. The \*Pursuer/Defender *(if other please specify)* wishes to raise a devolution issue in the above action.

*[The Pursuer or Defender or other party, as the case may be, should then insert the following information-*

- *the facts and circumstances and contentions of law on the basis of which it is alleged that the devolution issue arises in sufficient detail to enable the sheriff to determine whether such an issue arises in the proceedings;*
- *details of the relevant law including the relevant provisions of the Scotland Act 1998, the Government of Wales Act 1998 or the Northern Ireland Act 1998, as the case may be; and*
- *the reason why the resolution of the devolution issue is considered necessary for the purpose of disposing of the proceedings].*

Date *(insert date)*

*(Signed)*

Solicitor for the \*Pursuer/Defender *(if other please specify)*

\* Delete as appropriate

Rule 6(4)

## FORM 2

### FORM OF INTIMATION TO RELEVANT AUTHORITY OF A DEVOLUTION ISSUE RAISED IN CIVIL PROCEEDINGS IN THE SHERIFF COURT

To *(insert name and address)*

Court Ref No

1. You are given notice that in the Sheriff Court at *(insert address)*,

\* an action has been raised which includes a crave in respect of a devolution issue;

\* a devolution issue has been raised in an action;

A copy of the \* initial writ/pleadings in the case *(as adjusted)* is enclosed. A copy of the interlocutor appointing intimation is also enclosed.

2. If you wish to enter appearance as a party to the proceedings, you must lodge with the Sheriff Clerk *(insert name and address)* a notice in writing stating that you intend to appear as a party in the proceedings. The notice must be lodged within 14 days of *(insert date on which intimation was given)*.

Date *(insert date)*

*(Signed)*

Solicitor for \*Pursuer/Defender

\* Delete as appropriate.

Rule 8(3)

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## FORM 3

### FORM OF INTIMATION 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 (*insert name and address*)

Court Ref No

1. You are given notice that in an action raised in the Sheriff Court at (*insert address*), the sheriff 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 \* initial writ/pleadings in the case (*as adjusted*) is enclosed. A copy of the interlocutor appointing intimation is also enclosed.

2. The sheriff is considering whether to make 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 either removing or limiting the retrospective effect of the decision, or suspending the effect of the decision to allow the defect to be corrected.

3. If you wish to enter appearance as a party to the proceedings so far as they relate to the making of the order, you must lodge with the sheriff clerk (*insert name and address*) a notice in writing stating that you intend to appear as a party in the proceedings. The notice must be lodged within 14 days of (*insert date on which intimation was given*).

Date (*insert date*)

(Signed)

Sheriff Clerk

\* Delete as appropriate



## SCHEDULE 2

Rule 10(4)

### DETAILS TO BE INCLUDED WHERE REFERENCE MADE TO \*THE INNER HOUSE OF THE COURT OF SESSION/JUDICIAL COMMITTEE

1. The question(s) referred.
2. The addresses of the parties.
3. A concise statement of the background to the matter, including-
  - (i) the facts of the case, including any relevant findings of fact by the referring court; and
  - (ii) the main issues in the case and contentions of the parties with regard to them.
4. The relevant law including the relevant provisions of the \*Scotland Act 1998/Government of Wales Act 1998/Northern Ireland Act 1998.
5. The reasons why an answer to the question(s) \*is/are considered necessary for the purpose of disposing of the proceedings.

*Note:* A copy of the interlocutor making the reference and a copy of any judgment in the proceedings must be annexed to the reference.

\* Delete as appropriate.

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## EXPLANATORY NOTE

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

These Rules make provision for the procedures to be followed in civil proceedings in the Sheriff Court where a devolution issue within the meaning of the Scotland Act 1998, the Northern Ireland Act 1998 and the Government of Wales Act 1998, is raised by the parties to those proceedings.

The Rules provide for:-

- (a) when a devolution issue may be raised (rule 4);
- (b) what a party must specify and the manner in which that specification must be made where he wishes to raise a devolution issue (rule 5);

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- (c) the manner in which intimation of a devolution issue is given to the relevant authority (rule 6);
- (d) the manner in which the relevant authority may respond to intimation of a devolution issue in accordance with rule 6 (rule 7);
- (e) the manner in which intimation is given of the fact that the court is considering an order under section 102 of the Scotland Act 1998, section 81 of the Northern Ireland Act 1998 or section 110 of the Government of Wales Act 1998 (rule 8);
- (f) the manner in which a person may respond to intimation given in accordance with rule 8 (rule 9);
- (g) the manner in which a reference of a devolution issue is made to the Inner House of the Court of Session or the Judicial Committee (rule 10);
- (h) the sist of the cause on a reference being made to the Inner House of the Court of Session or the Judicial Committee in accordance with rule 10 (rule 11);
- (i) the making of interim orders notwithstanding a reference of a devolution issue to the Inner House of the Court of Session or the Judicial Committee (rule 12);
- (j) the manner in which and when a reference will be transmitted to the Inner House of the Court of Session or the Judicial Committee (rule 13); and
- (k) the procedure following the determination by the Inner House of the Court of Session or the Judicial Committee of a devolution issue referred to them or an appeal made to them (rule 14).