

GOVERNMENT OF WALES ACT 2006

EXPLANATORY NOTES

DETAILED COMMENTARY ON SECTIONS IN PART 6

Crown status

Schedule 9: Devolution Issues

Part 1

Preliminary

753. [Paragraph 1](#) defines “devolution issues” to include questions of both the legislative competence of the Assembly in relations to Acts and Measures which it has passed and the executive competence of the Welsh Assembly Government. It also includes alleged failures by the Welsh Assembly Government to comply with its obligations under European Community law, or the European Convention on Human Rights.
754. [Paragraph 2](#) allows courts and tribunals a discretion not to treat a contention about any of the matters covered by paragraph 1 as a devolution issue, where it appears to the court or tribunal hearing the proceedings that the contention is frivolous or vexatious.

Part 2

Proceedings in England and Wales

755. [Paragraph 4](#) provides that the Counsel General or the Attorney General can institute proceedings to decide a devolution issue. Where proceedings are brought by the Attorney General, then the Counsel General is entitled to defend them.
756. This does not prevent other people from bringing or defending such proceedings, but where they do so then the Attorney General and the Counsel General must be notified of the proceedings, and are entitled to take part in them ([paragraph 5](#)).
757. [Paragraph 29\(2\)\(a\)](#) gives both the Attorney General and the Counsel General a general power to require courts and tribunals to refer devolution issues in proceedings to which they are a party to the Supreme Court.
758. [Paragraphs 6-11](#) set out further procedures by which devolution issues can be referred upwards from courts of first instance to the higher courts for resolution.
759. There are different procedures depending on whether the issue arises in criminal proceedings or civil proceedings (by virtue of [paragraph 1\(2\)](#), this includes all non-criminal proceedings), and the court in which proceedings originate.