
SCOTTISH STATUTORY INSTRUMENTS

2021 No. 468

Act of Sederunt (Sheriff Appeal Court Rules) 2021

PART 6

INCIDENTAL PROCEDURE: SPECIAL PROCEDURES

CHAPTER 22

DEVOLUTION ISSUES

Interpretation

22.1. In this Chapter—

“devolution issue” means a devolution issue under—

- (a) Schedule 6 to the Scotland Act 1998(1);
- (b) Schedule 10 to the Northern Ireland Act 1998(2);
- (c) Schedule 9 to the Government of Wales Act 2006(3);

and any reference to Schedule 6, Schedule 10 or Schedule 9 is a reference to that Schedule in that Act;

“relevant authority” means—

- (a) the Advocate General;
- (b) in the case of a devolution issue under Schedule 6, the Lord Advocate;
- (c) in the case of a devolution issue under Schedule 10, the Attorney General for Northern Ireland, and the First Minister and deputy First Minister acting jointly;
- (d) in the case of a devolution issue under Schedule 9, the Counsel General to the Welsh Government.

Raising a devolution issue

22.2.—(1) A devolution issue is raised by specifying a devolution issue in Form 22.2.

(2) A devolution issue in Form 22.2 is to be lodged—

- (a) by an appellant, when the note of appeal is lodged;
- (b) by a respondent, when answers to the note of appeal are lodged,

unless the Court allows an appellant or a respondent to raise a devolution issue at a later stage in proceedings.

(3) An application to allow a devolution issue to be raised after the note of appeal has been lodged or answers to the note of appeal have been lodged, as the case may be, is to be made by motion.

(1) 1998 c.46. Schedule 6 was last amended by the European Union (Withdrawal) Act 2018 (c.16), Schedule 3, paragraph 23.
(2) 1998 c.47. Schedule 10 was last amended by the European Union (Withdrawal) Act 2018 (c.16), Schedule 3, paragraph 23.
(3) 2006 c.32. Schedule 9 was last amended by the Senedd and Elections (Wales) Act 2020 anaw.1, Schedule 1, paragraph 2.

(4) The party raising a devolution issue must specify, in sufficient detail to enable the Court to determine whether a devolution issue arises—

- (a) the facts and circumstances;
- (b) the contentions of law,

on the basis of which it is alleged that the devolution issue arises in the appeal.

(5) The Court may not determine a devolution issue unless permission has been given for the devolution issue to proceed.

Raising a devolution issue: intimation and service

22.3.—(1) This rule applies to the intimation of a devolution issue on a relevant authority under—

- (a) paragraph 5 of Schedule 6;
- (b) paragraph 23 of Schedule 10(4);
- (c) paragraph 14(1) of Schedule 9.

(2) When a devolution issue is raised, the party raising it must intimate the devolution issue to the relevant authority unless the relevant authority is a party to the appeal.

(3) Within 14 days after intimation, the relevant authority may give notice to the Clerk that it intends to take part in the appeal as a party under—

- (a) paragraph 6 of Schedule 6;
- (b) paragraph 24 of Schedule 10(5);
- (c) paragraph 14(2) of Schedule 9.

Raising a devolution issue: permission to proceed

22.4.—(1) When a devolution issue is raised, the Clerk must fix a hearing and intimate the date and time of that hearing to the parties.

(2) Within 14 days after the Clerk intimates the date and time of the hearing, each party must lodge a note of argument.

(3) That note of argument must summarise the submissions the party intends to make on the question of whether a devolution issue arises in the appeal.

(4) At the hearing, the procedural Appeal Sheriff must determine whether a devolution issue arises in the appeal.

(5) Where the procedural Appeal Sheriff determines that a devolution issue arises, the procedural Appeal Sheriff must grant permission for the devolution issue to proceed.

(6) Where the procedural Appeal Sheriff determines that no devolution issue arises, the procedural Appeal Sheriff must refuse permission for the devolution issue to proceed.

(7) At the hearing the procedural Appeal Sheriff may make any order, including an order concerning expenses.

(8) In this rule, “party” includes a relevant authority that has given notice to the Clerk that it intends to take part in the appeal as a party, and “parties” is construed accordingly.

(4) Paragraph 23 was amended by the Justice (Northern Ireland) Act 2002 (c.26), Schedule 7, paragraph 2.

(5) Paragraph 24 was amended by the Justice (Northern Ireland) Act 2002 (c.26), Schedule 13, paragraph 1.

Participation by the relevant authority

22.5.—(1) Paragraph (2) applies where a relevant authority has given notice to the Clerk that it intends to take part in the appeal as a party.

(2) Within 7 days after permission to proceed is given, the relevant authority must lodge a minute containing the relevant authority's written submissions in respect of the devolution issue.

Reference to the Inner House or Supreme Court

22.6.—(1) This rule applies to the reference of a devolution issue to the Inner House of the Court of Session for determination under—

- (a) paragraph 7 of Schedule 6(6);
- (b) paragraph 25 of Schedule 10(7);
- (c) paragraph 15 of Schedule 9.

(2) This rule also applies where the Court has been required by a relevant authority to refer a devolution issue to the Supreme Court under—

- (a) paragraph 33 of Schedule 6(8);
- (b) paragraph 33 of Schedule 10(9);
- (c) paragraph 29 of Schedule 9.

(3) The Court is to make an order concerning the drafting and adjustment of the reference.

(4) The reference must specify—

- (a) the questions for the Inner House or the Supreme Court;
- (b) the addresses of the parties;
- (c) a concise statement of the background to the matter, including—
 - (i) the facts of the case, including any relevant findings of fact;
 - (ii) the main issues in the case and contentions of the parties with regard to them;
- (d) the relevant law including the relevant provisions of the Scotland Act 1998, the Northern Ireland Act 1998 or the Government of Wales Act 2006;
- (e) the reasons why an answer to the questions is considered necessary for the purpose of disposing of the proceedings.

(5) The reference must have annexed to it—

- (a) a copy of all orders made in the appeal;
- (b) a copy of any judgments in the proceedings.

(6) When the reference has been drafted and adjusted, the Court is to make and sign the reference.

(7) The Clerk must—

- (a) send a copy of the reference to the parties to the proceedings;
- (b) certify on the back of the principal reference that sub-paragraph (a) has been complied with.

(6) Paragraph 7 was amended by the Constitutional Reform Act 2005 (c.4), Schedule 9(2), paragraph 103(2).

(7) Paragraph 25 was amended by the Constitutional Reform Act 2005 (c.4), Schedule 9(2), paragraph 117(2).

(8) Paragraph 33 was amended by the Justice (Northern Ireland) Act 2002, Schedule 7, paragraph 4(c) and the Constitutional Reform Act 2005, Schedule 9(2), paragraph 106(4).

(9) Paragraph 33 was amended by the Justice (Northern Ireland) Act 2002, Schedule 7, paragraph 2(6) and the Constitutional Reform Act 2005, Schedule 9(2), paragraph 118(4).

Reference to the Inner House or Supreme Court: further procedure

22.7.—(1) On a reference being made, the appeal must, unless the Court orders otherwise, be stayed until the devolution issue has been determined.

(2) Despite a reference being made, the Court continues to have the power to make any interim order required in the interests of the parties.

(3) The Court may recall a stay for the purpose of making such interim orders.

(4) On a reference being made the Clerk must send the principal copy of the reference to either (as the case may be)—

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

(b) the Registrar of the Supreme Court (together with 7 copies).

(5) Unless the Court orders otherwise, the Clerk must not send the principal copy of the reference where an appeal against the making of the reference is pending.

(6) An appeal is to be treated as pending either—

(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.

Reference to the Inner House or Supreme Court: procedure following determination

22.8.—(1) This rule applies where either the Inner House of the Court of Session or the Supreme Court has determined a devolution issue.

(2) Upon receipt of the determination, the Clerk must place a copy of the determination before the Court.

(3) The Court may, on the motion of any party or otherwise, order such further procedure as may be required.

(4) Where the Court makes an order other than on the motion of a party, the Clerk must intimate a copy of the order on all parties to the appeal.