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## SCHEDULES

### SCHEDULE 8

Section 109.

#### DEVOLUTION ISSUES

##### Commencement Information

**II** Sch. 8 in force at 1.12.1998 by S.I. 1998/2789, art. 2

#### PART I

##### PRELIMINARY

- 1 (1) In this Schedule “devolution issue” means—
  - (a) a question whether a function is exercisable by the Assembly,
  - (b) a question whether a purported or proposed exercise of a function by the Assembly is, or would be, within the powers of the Assembly (including a question whether a purported or proposed exercise of a function by the Assembly is, or would be, outside its powers by virtue of section 106(7) or 107(1)),
  - (c) a question whether the Assembly has failed to comply with a duty imposed on it (including a question whether the Assembly has failed to comply with any obligation which is an obligation of the Assembly by virtue of section 106(1) or (6)), or
  - (d) a question whether a failure to act by the Assembly is incompatible with any of the Convention rights.
- (2) In this Schedule—
  - (a) “the Judicial Committee” means the Judicial Committee of the Privy Council, and
  - (b) “civil proceedings” means any proceedings other than criminal proceedings.
- 2 A devolution issue shall not 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.

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## PART II

### PROCEEDINGS IN ENGLAND AND WALES

#### *Application of Part II*

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

#### *Institution of proceedings*

- 4 (1) Proceedings for the determination of a devolution issue may be instituted by the Attorney General.
- (2) Sub-paragraph (1) does not limit any power to institute proceedings exercisable apart from that sub-paragraph by any person.

#### *Notice of devolution issue*

- 5 (1) A court or tribunal shall order notice of any devolution issue which arises in any proceedings before it to be given to the Attorney General and the Assembly (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 House of Lords, 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 shall refer any devolution issue which arises in proceedings before it to the Court of Appeal; and any other tribunal may make such a reference.

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- 9 A court, other than the Court of Appeal or the House of Lords, 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 Judicial Committee*

- 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 Judicial Committee.

*Appeals from superior courts to Judicial Committee*

- 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 shall lie to the Judicial Committee, but only—
- (a) with leave of the court concerned, or
  - (b) failing such leave, with special leave of the Judicial Committee.

**PART III**

PROCEEDINGS IN SCOTLAND

*Application of Part III*

- 12 This Part of this Schedule 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) Sub-paragraph (1) does not limit any power to institute proceedings exercisable apart from that sub-paragraph by any person.

*Intimation of devolution issue*

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

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*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 House of Lords, 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 shall 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 Judicial Committee*

- 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 Judicial Committee.
- 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 Judicial Committee.

*Appeals from superior courts to Judicial Committee*

- 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 shall lie to the Judicial Committee.
- 21 An appeal against a determination of a devolution issue by—
- (a) a court 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 of three or more judges of the Court of Session from which there is no appeal to the House of Lords,
- shall lie to the Judicial Committee, but only with leave of the court concerned or, failing such leave, with special leave of the Judicial Committee.

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## PART IV

### PROCEEDINGS IN NORTHERN IRELAND

#### *Application of Part IV*

- 22 This Part of this Schedule 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 Attorney General for Northern Ireland.
- (2) Sub-paragraph (1) does not limit any power to institute proceedings exercisable apart from that sub-paragraph by any person.

#### *Notice of devolution issue*

- 24 (1) A court or tribunal shall order notice of any devolution issue which arises in any proceedings before it to be given to the Attorney General for Northern Ireland and the Assembly (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 House of Lords, 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 shall 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 Judicial Committee*

- 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 Judicial Committee.

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### *Appeals from Court of Appeal to Judicial Committee*

- 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 shall lie to the Judicial Committee, but only—
- (a) with leave of the Court of Appeal in Northern Ireland, or
  - (b) failing such leave, with special leave of the Judicial Committee.

## PART V

### GENERAL

#### *Proceedings in the House of Lords*

- 29 Any devolution issue which arises in judicial proceedings in the House of Lords shall be referred to the Judicial Committee unless the House considers it more appropriate, having regard to all the circumstances, that they should determine the issue.

#### *Direct references to Judicial Committee*

- 30 (1) The relevant law officer or the Assembly may require any court or tribunal to refer to the Judicial Committee any devolution issue which has arisen in any proceedings before it to which he or it is a party.
- (2) In sub-paragraph (1) “the relevant law officer” means—
- (a) in relation to proceedings in England and Wales, the Attorney General,
  - (b) in relation to proceedings in Scotland, the Advocate General for Scotland, and
  - (c) in relation to proceedings in Northern Ireland, the Attorney General for Northern Ireland.
- 31 (1) The Attorney General or the Assembly may refer to the Judicial Committee 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 Assembly—
- (a) the Attorney General shall notify the Assembly of that fact, and
  - (b) the Assembly shall not exercise the function 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.

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### *The Judicial Committee*

- 32 Any decision of the Judicial Committee in proceedings under this Schedule—
- (a) shall be stated in open court, and
  - (b) shall be binding in all legal proceedings (other than proceedings before the Judicial Committee).
- 33 No member of the Judicial Committee shall sit and act as a member of the Judicial Committee in proceedings under this Schedule unless he holds or has held—
- (a) the office of a Lord of Appeal in Ordinary, or
  - (b) high judicial office as defined in section 25 of the <sup>M1</sup>Appellate Jurisdiction Act 1876 (ignoring for this purpose section 5 of the <sup>M2</sup>Appellate Jurisdiction Act 1887).

#### **Marginal Citations**

- M1** 1876 c. 59.  
**M2** 1887 c. 70.

- 34 (1) Her Majesty may by Order in Council—
- (a) confer on the Judicial Committee in relation to proceedings under this Schedule such powers as appear to be appropriate,
  - (b) apply the <sup>M3</sup>Judicial Committee Act 1833 in relation to proceedings under this Schedule with exceptions and modifications, and
  - (c) make rules for regulating the procedure with respect to proceedings under this Schedule before the Judicial Committee.
- (2) An Order in Council under this paragraph may contain any appropriate consequential, incidental, supplementary or transitional provisions or savings (including provisions in the form of amendments or repeals of enactments).
- (3) No recommendation shall be made to Her Majesty in Council to make an Order in Council under this paragraph which contains provisions in the form of amendments or repeals of enactments contained in an Act unless a draft of the statutory instrument containing the Order in Council has been laid before, and approved by a resolution of, each House of Parliament.
- (4) A statutory instrument containing an Order in Council which makes provision falling within sub-paragraph (1)(a) or (b) shall (unless a draft of it has been approved by a resolution of each House of Parliament) be subject to annulment in pursuance of a resolution of either House of Parliament.

#### **Marginal Citations**

- M3** 1833 c. 41.

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### *Costs*

- 35 (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).
- (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*

- 36 Any power to make provision for regulating the procedure before any court or tribunal shall include 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*

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



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