

*Status: Point in time view as at 01/10/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Northern Ireland Act 1998, Cross Heading: Bail and legal aid in criminal proceedings. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 10

#### DEVOLUTION ISSUES

#### PART V

#### GENERAL

##### *Bail and legal aid in criminal proceedings*

- 39 (1) Sub-paragraph (3) applies where a devolution issue arises in proceedings against a person (“the defendant”) for an offence and the issue is referred to the Court of Appeal in Northern Ireland under paragraph 7.
- (2) Sub-paragraphs (3) and (4) apply where such an issue arises in such proceedings and—
- (a) the issue is referred by the [F<sup>1</sup>Court of Appeal] to the [F<sup>2</sup>Supreme Court] under paragraph 9 or 33; or
  - (b) the issue is determined by the [F<sup>1</sup>Court of Appeal] under paragraph 7 and—
    - (i) an appeal to the [F<sup>2</sup>Supreme Court] against the determination is brought under paragraph 10; or
    - (ii) an application for leave to bring such an appeal is made to the [F<sup>1</sup>Court of Appeal] under that paragraph.
- (3) The [F<sup>1</sup>Court of Appeal] may, if it thinks fit, on the application of the defendant, admit him to bail pending the determination of the reference, appeal or application.
- (4) The [F<sup>1</sup>Court of Appeal] may at any time when it appears to the [F<sup>1</sup>Court of Appeal]—
- (a) that it is desirable in the interests of justice that the defendant should have legal aid; and
  - (b) that he has not sufficient means to obtain that aid,
- assign to him a solicitor and counsel, or counsel only, in the reference, appeal or application.
- (5) If, on a question of granting a person free legal aid under sub-paragraph (4), there is a doubt—
- (a) whether it is desirable in the interests of justice that he should have legal aid; or
  - (b) whether he has sufficient means to obtain that aid,
- the doubt shall be resolved in favour of granting him free legal aid.
- (6) The fees of any counsel, and the expenses and fees of any solicitor, assigned to a person under sub-paragraph (4) shall be defrayed, up to an amount allowed by

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the Master (Taxing Office), by the Lord Chancellor out of money provided by Parliament.

#### Textual Amendments

- F1** Words in Sch. 10 para. 39(2)-(4) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 40, 148, [Sch. 9 para. 118\(6\)\(a\)](#); S.I. 2009/1604, [art. 2\(a\)\(d\)](#)
- F2** Words in Sch. 10 para. 39(2)-(4) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 40, 148, [Sch. 9 para. 118\(6\)\(b\)](#); S.I. 2009/1604, [art. 2\(a\)\(d\)](#)

40 Where a devolution issue arises as mentioned in sub-paragraph (1) of paragraph 39 and—

- (a) the issue is referred to the [<sup>F3</sup>Supreme Court] under paragraph 9 or 33; or
- (b) the issue is determined by the Court of Appeal in Northern Ireland under paragraph 7 and—
- (i) an appeal to the [<sup>F3</sup>Supreme Court] against the determination is brought under paragraph 10; or
- (ii) an application for special leave to bring such an appeal is made to the [<sup>F3</sup>Supreme Court] under that paragraph,

sub-paragraphs (3) to (6) of paragraph 39 shall apply as if the references to the [<sup>F4</sup>Court of Appeal] were references to the [<sup>F3</sup>Supreme Court] .

#### Textual Amendments

- F3** Words in Sch. 10 para. 40(a)(b) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 40, 148, [Sch. 9 para. 119\(a\)](#); S.I. 2009/1604, [art. 2\(a\)\(d\)](#)
- F4** Words in Sch. 10 para. 40(a)(b) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 40, 148, [Sch. 9 para. 119\(b\)](#); S.I. 2009/1604, [art. 2\(a\)\(d\)](#)

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