

Status: Point in time view as at 01/04/2015.

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) [^{F1}Sub-paragraph (3) applies] where such an issue arises in such proceedings and—
- (a) the issue is referred by the [^{F2}Court of Appeal] to the [^{F3}Supreme Court] under paragraph 9 or 33; or
 - (b) the issue is determined by the [^{F2}Court of Appeal] under paragraph 7 and—
 - (i) an appeal to the [^{F3}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 [^{F2}Court of Appeal] under that paragraph.
- (3) The [^{F2}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 [^{F2}Court of Appeal] may at any time when it appears to the [^{F2}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 the Master (Taxing Office), by the Lord Chancellor ^{F4}....

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Textual Amendments

- F1** Words in Sch. 10 para. 39(2) substituted (1.4.2015) by [Access to Justice \(Northern Ireland\) Order 2003 \(S.I. 2003/435 \(N.I. 10\)\)](#), art. 1(2), [Sch. 4 para. 14](#) (with art. 45); S.R. 2015/194, art. 2, [Sch.](#) (with art. 3)
- 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\(6\)\(a\)](#); S.I. 2009/1604, [art. 2\(a\)\(d\)](#)
- F3** 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\(a\)\(d\)](#)
- F4** Words in Sch. 10 para. 39(6) omitted (12.4.2010) by virtue of [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), art. 1(2), [Sch. 18 para. 58\(2\)](#) (with arts. 28-31)

Modifications etc. (not altering text)

- C1** Sch. 10 para. 39(6): transfer of functions (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), art. 1(2), [Sch. 17 para. 16](#) (with arts. 28-31)

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

- (a) the issue is referred to the [^{F5}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 [^{F5}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 [^{F5}Supreme Court] under that paragraph,
- sub-paragraphs (3) to (6) of paragraph 39 shall apply as if the references to the [^{F6}Court of Appeal] were references to the [^{F5}Supreme Court] .

Textual Amendments

- F5** 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\(a\)\(d\)](#)
- F6** 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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