
STATUTORY INSTRUMENTS

1999 No. 1345 (S.100)

COURT OF SESSION, SCOTLAND

Act of Sederunt (Devolution Issues Rules) 1999

Made - - - - *4th May 1999*

Coming into force - - *6th May 1999*

The Lords of Council and Session, under and by virtue of the powers conferred on them by section 5 of the Court of Session Act 1988(1) paragraph 37 of Schedule 6 to the Scotland Act 1998(2) paragraph 38 of Schedule 10 to the Northern Ireland Act 1998(3) and paragraph 36 of Schedule 8 to the Government of Wales Act 1998(4) and of all other powers enabling them in that behalf, do hereby enact and declare:

Citation and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Devolution Issues Rules) 1999 and shall come into force on 6th May 1999.

(2) This Act of Sederunt shall be inserted in the Books of Sederunt.

Devolution Rules

2.—(1) Schedule 2 to the Act of Sederunt (Rules of the Court of Session 1994)1994, is amended as follows.

(2) After Chapter 25 (Counterclaims) there is inserted the following new Chapter—

“CHAPTER 25A
DEVOLUTION ISSUES

Interpretation of this Chapter

25A.1. In this Chapter—

“Advocate General” means the Advocate General for Scotland;

“devolution issue” means a devolution issue within the meaning of—

(a) Schedule 6 to the Scotland Act 1998;

(1) 1988 c. 36.
(2) 1998 c. 46.
(3) 1998 c. 47.
(4) 1998 c. 38.

- (b) Schedule 10 to the Northern Ireland Act 1998; or
 - (c) Schedule 8 to the Government of Wales Act 1998,
- and any reference to Schedule 6, Schedule 10 or Schedule 8 is a reference to that Schedule to, respectively, the Scotland Act 1998, the Northern Ireland Act 1998 and the Government of Wales Act 1998;
- “the Judicial Committee” means the Judicial Committee of the Privy Council;
- “relevant authority” means the Advocate General and–
- (a) in the case of a devolution issue within the meaning of Schedule 6, the Lord Advocate;
 - (b) in the case of a devolution issue within the meaning of Schedule 10, the Attorney General for Northern Ireland, and the First Minister and deputy First Minister acting jointly;
 - (c) in the case of a devolution issue within the meaning of Schedule 8, the National Assembly for Wales.

Proceedings where devolution issue raised in principal writ

25A.2. Where any summons, petition or other principal writ contains an averment or conclusion which raises a devolution issue, the principal writ shall be served on the relevant authority, unless he has initiated the proceedings.

Time for raising devolution issue

25A.3. –

(1) It shall not be competent for a party to any proceedings to raise a devolution issue otherwise than in the pleadings before any evidence is led, unless the court, on cause shown, otherwise determines.

(2) Where the court determines that a devolution issue may be raised as mentioned in paragraph (1) it shall make such orders as to the procedure to be followed as appear to it to be appropriate and, in particular, it shall make such orders–

- (a) as are necessary to ensure that intimation of the devolution issue is given in writing to the relevant authority for the purposes of paragraph 5 of Schedule 6, or as the case may be, paragraph 23 of Schedule 10 or paragraph 14(1) of Schedule 8; and
- (b) as to the time in which any step is to be taken by any party in the proceedings.

Specification of devolution issue

25A.4. –

- (1) Any party raising a devolution issue shall specify–
 - (a) where he initiates the action, in the principal writ;
 - (b) where a counterclaim is lodged, in the counterclaim;
 - (c) in any other case, in the defences or answers,

the facts and circumstances and contentions of law on the basis of which it is alleged that the devolution issue arises in sufficient detail to enable the court to determine, for the purposes of paragraph 2 of Schedule 6 or, as the case may be, of Schedule 10 or Schedule 8, whether a devolution issue arises in the proceedings.

(2) Where a party wishes to raise a devolution issue after the lodging of any writ mentioned in paragraph (1), he shall do so either by adjustment or amendment so as to specify in his pleadings the matters mentioned in that paragraph.

Intimation of devolution issue

25A.5. –

(1) Intimation of a devolution issue in pursuance of paragraph 5 of Schedule 6 or, as the case may be, paragraph 23 of Schedule 10 or paragraph 14(1) of Schedule 8 shall be given to the relevant authority (unless he is a party to the proceedings or has been served with the principal writ in pursuance of Rule 25A.2) in accordance with this Rule.

(2) Where the devolution issue is raised in the principal writ, service of the principal writ on the relevant authority shall be treated as such intimation.

(3) In any other case, the party raising the devolution issue shall, as soon as practicable, enrol a motion craving a warrant to intimate the devolution issue to the relevant authority and on hearing the motion, where it appears to the court that a devolution issue arises, the court shall order such intimation in Form 25A.5.

(4) The intimation of a devolution issue shall specify 14 days, or such other period as the court on cause shown may specify, as the period within which a relevant authority may give notice to the Deputy Principal Clerk of his intention to take part as a party in the proceedings as mentioned in paragraph 6 of Schedule 6 or, as the case may be, paragraph 24 of Schedule 10 or paragraph 14(2) of Schedule 8.

Response to intimation

25A.6. –

(1) Where a relevant authority gives notice as mentioned in Rule 25A.5(4), he shall, not later than 7 days after the date of such notice, lodge a minute of his written submissions in respect of the devolution issue together with conclusions and pleas in law as appropriate.

(2) The minute lodged in accordance with paragraph (1) shall be intimated to all other parties in the proceedings.

Reference of devolution issue to Inner House

25A.7. Where a devolution issue arises in any proceedings before the Lord Ordinary, any reference of the devolution issue to the Inner House as mentioned in paragraph 7 of Schedule 6 or, as the case may be, paragraph 25 of Schedule 10 or paragraph 15 of Schedule 8 shall be by means of a Report in accordance with Chapter 34 of these Rules.

Reference of devolution issue to Judicial Committee

25A.8. –

(1) Where the court–

- (a) decides in accordance with paragraph 10 of Schedule 6 or, as the case may be, paragraph 28 of Schedule 10 or paragraph 18 of Schedule 8; or
- (b) is required as mentioned in paragraph 33 of Schedule 6 or, as the case may be, paragraph 33 of Schedule 10 or paragraph 30(1) of Schedule 8,

to refer a devolution issue to the Judicial Committee, it shall pronounce an interlocutor giving directions to the parties about the manner and time in which the reference is to be drafted and adjusted.

(2) When the reference has been drafted at the sight of the court, the court shall make and sign the reference.

(3) The reference shall include such matter as may be required by Rule 2.9 of the Judicial Committee (Devolution Issues) Rules 1999(5), and shall have annexed to it the interlocutor making the reference.

(4) Service of the reference in pursuance of Rule 2.8 of the Judicial Committee (Devolution Issues) Rules 1999(5) may be effected by the Deputy Principal Clerk by first class recorded delivery post.

Sist of cause on reference to Judicial Committee

25A.9. –

(1) Subject to paragraph (2), on a reference being made to the Judicial Committee as mentioned in Rule 25A.8, the cause shall, unless the court when making the reference otherwise orders, be sisted until the Judicial Committee has determined the devolution issue.

(2) The court may recall a sist made under paragraph (1) for the purpose of making any interim order which a due regard to the interests of the parties may require.

Transmission of reference

25A.10. –

(1) The reference shall be transmitted by the Deputy Principal Clerk to the Registrar of the Judicial Committee.

(2) Unless the court otherwise directs, the reference shall not be sent to the Registrar of the Judicial Committee where a reclaiming motion or an appeal against the making of the reference is pending.

(3) For the purpose of paragraph (2), a reclaiming motion or an appeal shall be treated as pending–

- (a) until the expiry of the time for marking the reclaiming motion or appeal; or
- (b) where a reclaiming motion or an appeal has been made, until it has been determined.

Appeals to the Judicial Committee

25A.11. –

(1) Where an appeal to the Judicial Committee is made–

- (a) under paragraph 12 of Schedule 6 or, as the case may be, paragraph 30 of Schedule 10 or paragraph 20 of Schedule 8; or
- (b) with leave or special leave, under paragraph 13(b) of Schedule 6 or, as the case may be, paragraph 31(b) of Schedule 10 or paragraph 21(b) of Schedule 8,

the court from whose determination the appeal is made may make such orders as it thinks fit, having regard to the interests of the parties to the cause, for the purpose of regulating the proceedings pending the determination of the appeal by the Judicial Committee, including orders relating to interim possession, execution and expenses already incurred.

(2) Where the determination of an appeal by the Judicial Committee does not dispose of the whole cause, the court against whose determination the appeal was made shall order such further procedure as is necessary to enable it to dispose of the whole cause.

(5) S.I.1999/665.

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Orders mitigating the effect of certain decisions

25A.12. –

(1) In any proceedings where the Court is considering making an order under–

- (a) section 102 of the Scotland Act 1998;
- (b) section 81 of the Northern Ireland Act 1998; or
- (c) section 110 of the Government of Wales Act 1998,

(power of the court to vary or suspend the effect of certain decisions), the Court shall order intimation of the fact to be made by the Deputy Principal Clerk to every person to whom intimation is required to be given by that section.

(2) Intimation as mentioned in paragraph (1) shall–

- (a) be made forthwith in Form 25A. 12 by first class recorded delivery post; and
- (b) specify 7 days, or such other period as the court thinks fit, as the period within which a person may give notice of his intention to take part in the proceedings.”

(3) In the Appendix, after Form 24.3 there is inserted–

“Form 25A.5

Form of intimation to a relevant authority of a devolution issue raised in civil proceedings

To: *(name and address of relevant authority)*

1. You are given notice that an action has been raised in the Court of Session which includes a conclusion or prayer in respect of a devolution issue. A copy of the pleadings in the case *(as adjusted)* is enclosed.

2. If you wish to take part as a party to the proceedings in so far as they relate to a devolution issue you must lodge with the Deputy Principal Clerk of Session, Court of Session, 2 Parliament Square, Edinburgh EH1 1RQ a notice in writing stating that you intend to take part as a party in the proceedings. The notice must be lodged within 14 days of *(insert date on which intimation was given)*.

Date *(insert date)*

(Signed)

Solicitor

for

Pursuer/Defender/Petitioner/Respondent.

Form 25A.12

Form of intimation to a relevant authority that the court is considering making an order under [section 102 of the Scotland Act 1998/section 81 of the Northern Ireland Act 1998/section 110 of the Government of Wales Act 1998]

To: *(name and address of relevant authority)*

1. You are given notice that in an action raised in the Court of Session, the court has decided [that an Act/provision of an Act of the Scottish Parliament is not within the legislative competence of the Parliament] [a member of the Scottish Executive does not have the power

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to make, confirm or approve a provision of subordinate legislation he has purported to make, confirm or approve]. A copy of the relevant opinion/interlocutor is enclosed.

2. The court is considering whether to make an order [removing or limiting the retrospective effect of the decision/suspending the effect of the decision to allow the defect to be corrected].

3. If you wish to take part as a party to the proceedings so far as they relate to the making of the order mentioned in paragraph 2 you must lodge with the Deputy Principal Clerk of Session, Court of Session, 2 Parliament Square, Edinburgh EH1 1RQ a notice in writing stating that you intend to take part as a party in the proceedings. The notice must be lodged within 7 days of (*date on which intimation was given*).

Date (*insert date*)

(*Signed*)

Deputy Principal Clerk of Session.”

Edinburgh,
4 May 1999.

Rodger of Earlsferry
Lord President I.P.D.

EXPLANATORY NOTE

(This note is not part of the Act of Sederunt)

This Act of Sederunt amends the Rules of the Court of Session 1994 by adding a new Chapter 25A providing rules to regulate the procedure where a devolution issue (within the meaning of Schedule 6 to the Scotland Act 1998, Schedule 10 to the Northern Ireland Act 1998 and Schedule 8 to the Government of Wales Act 1998) arises in any proceedings.

It provides, in particular, that, unless the court on cause shown otherwise permits, a devolution issue should be raised before any evidence has been led in the proceedings. It also provides for special time limits for intimation to the relevant authority (in most cases the Lord Advocate and the Advocate General for Scotland) where a devolution issue is raised after the principal writ has been served and for service on the relevant authority where the devolution issue arises in the principal writ.

It regulates the procedure for making references of devolution issues to the Inner House of the Court of Session and to the Judicial Committee of the Privy Council.

It regulates the giving of notice to those entitled to intervene where the court is considering making an order under section 102 of the Scotland Act or the corresponding provisions of the Northern Ireland and Wales legislation mitigating the effect of a decision that a provision of devolved legislation is invalid.