

## PRACTICE DIRECTION

## DEVOLUTION ISSUES

**THIS PRACTICE DIRECTION IS DIVIDED INTO 4 PARTS:**

- Part I Introduction
- Part II Directions applicable to all proceedings
- Part III Directions applicable to specific proceedings
- Part IV Appeals

**PART I INTRODUCTION****DEFINITIONS**

- 1** In this Practice Direction –
- ‘the Assembly’ means the National Assembly for Wales or Cynulliad Cenedlaethol Cymru
  - ‘the GWA’ means the Government of Wales Act 1998
  - ‘the NIA’ means the Northern Ireland Act 1998
  - ‘the SA’ means the Scotland Act 1998
  - ‘the Acts’ mean the GWA, the NIA and the SA
  - ‘the Judicial Committee’ means the Judicial Committee of the Privy Council
  - ‘the CPR’ means the Civil Procedure Rules 1998
  - ‘the FPR’ means the Family Proceedings Rules 1991
  - ‘the FPC’ means the Family Proceedings Courts (Children Act 1989) Rules 1991
  - ‘devolution issue’ has the same meaning as in paragraph 1, schedule 8 to the GWA; paragraph 1, schedule 10 to the NIA; and paragraph 1, schedule 6 of the SA
  - ‘devolution issue notice’ means a notice that a devolution issue has arisen in proceedings

**SCOPE**

- 2.1** This Practice Direction supplements the provisions dealing with devolution issues in the Acts. It deals specifically with the position if a devolution issue arises under the GWA. If a devolution issue arises under the NIA or the SA the procedure laid down in this Practice Direction should be adapted as required.

**THE DEVOLUTION LEGISLATION**

- 3.1** Schedule 8 to the GWA contains provisions dealing with devolution issues arising out of the GWA; schedule 10 to the NIA contains provisions dealing with devolution issues arising out of the NIA; and schedule 6 to the SA contains provisions dealing with devolution issues arising out of the SA.

**3.2** Broadly a devolution issue will involve a question whether a devolved body has acted or proposes to act within its powers (which includes not acting incompatibly with Convention rights<sup>1</sup> and Community law<sup>2</sup>) or has failed to comply with a duty imposed on it. Reference should be made to the Acts where 'devolution issue' is defined.

### 3.3

- (1) If a devolution issue under the GWA arises in proceedings, the court must order notice of it to be given to the Attorney General and the Assembly if they are not already a party. They have a right to take part as a party in the proceedings so far as they relate to a devolution issue, if they are not already a party (paragraph 5, schedule 8 to the GWA.) If they do take part, they may require the court to refer the devolution issue to the Judicial Committee (paragraph 30, schedule 8 to the GWA)<sup>3</sup>.
- (2) There are similar provisions in the NIA and the SA although the persons to be notified are different (paragraphs 13, 14, and 33, schedule 10 to the NIA; paragraphs 16, 17 and 33, schedule 6 to the SA).

**3.4** Under all the Acts the court may refer a devolution issue to another court as follows:

- (1) A magistrates' court may refer a devolution issue arising in civil or summary proceedings to the High Court (paragraphs 6 and 9, schedule 8 to the GWA; paragraphs 15 and 18, schedule 10 to the NIA; and paragraphs 18 and 21, schedule 6 to the SA).
- (2) The Crown Court may refer a devolution issue arising in summary proceedings to the High Court and a devolution issue arising in proceedings on indictment to the Court of Appeal (paragraph 9, schedule 8 to the GWA; paragraph 18, schedule 10 to the NIA; paragraph 21, schedule 6 to the SA).
- (3) A county court, the High Court (unless the devolution issue has been referred to the High Court)<sup>4</sup>, and the Crown Court<sup>5</sup> may refer a devolution issue arising in civil proceedings to the Court of Appeal (paragraph 7, schedule 8 to the GWA; paragraph 16, schedule 10 to the NIA; paragraph 19, schedule 6 to the SA).
- (4) A tribunal from which there is no appeal must, and any other tribunal may, refer a devolution issue to the Court of Appeal (paragraph 8, schedule 8 to the GWA; paragraph 17, schedule 10 to the NIA; paragraph 20, schedule 6 to the SA).
- (5) The Court of Appeal may refer a devolution issue to the Judicial Committee, unless the devolution issue was referred to it by another court (paragraph 10, schedule 8 to the GWA; paragraph 19, schedule 10 to the NIA; paragraph 22, schedule 6 to the SA).
- (6) An appeal against the determination of a devolution issue by the High Court or the Court of Appeal on a reference lies to the Judicial Committee with the leave of the court concerned, or,

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1 The rights and fundamental freedoms set out in – (a) Articles 2 to 12 and 14 of the European Convention on Human Rights ('ECHR'), (b) Articles 1 to 3 of the First Protocol (agreed at Paris on 20th March 1952), and (c) Articles 1 and 2 of the Sixth Protocol (agreed at Strasbourg on 11th May 1994), as read with Articles 16 and 18 of the ECHR (Section 1 Human Rights Act 1998; s. 107(1) and (5) GWA; sections 6(2); 24(1) and 98(1) NIA; sections 29(2); 57(2) and 126 (1) SA).

2 All the rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Community Treaties; and all the remedies and procedures from time to time provided for by or under the Community Treaties (sections 106(7) and 155(1), GWA; sections 6(2); 24(1) and 98(1), NIA; sections 29(2); 57(2) and 126(9) SA).

3 If the Attorney General or the Assembly had become a party to the original proceedings but did not exercise their right to require the devolution issue to be referred to the Judicial Committee and the court decided the case, they would have the same rights of appeal as parties. These would not allow them to appeal a decision made in proceedings on indictment, although the Attorney General has a power under section 36 of the Criminal Justice Act 1972 to refer a point of law to the Court of Appeal where the defendant has been acquitted in a trial on indictment.

Paragraph 31, schedule 8 to the GWA, allows the Attorney General and Assembly to refer to the Judicial Committee any devolution issue which is not the subject of proceedings. This power could possibly be used if a court reached a decision where they had not been parties and so had no rights of appeal but such a reference could not affect the decision of the court.

4 If an appeal by way of case stated in criminal proceedings goes to the Divisional Court there appears to be no power for the Divisional Court to refer a devolution issue to the Court of Appeal.

5 For example, in appeals from a magistrates' court in a licensing matter.

failing such leave, with special leave of the Judicial Committee (paragraph 11, schedule 8 to the GWA; paragraph 20, schedule 10 to the NIA; paragraph 23, schedule 6 to the SA).

- 3.5** A court may take into account additional expense which the court considers that a party has incurred as a result of the participation of the Attorney General or the Assembly in deciding any question as to costs (paragraph 35, schedule 8 to the GWA).

## **PART II DIRECTIONS APPLICABLE TO ALL PROCEEDINGS**

### **SCOPE**

- 4.** Paragraphs 5 to 13 apply to proceedings in England and Wales in the magistrates' courts, the county courts, the Crown Court, the High Court and the Court of Appeal (Civil and Criminal Division). Paragraph 10 also applies to the form and procedure for a reference to the Court of Appeal by a tribunal.

### **RAISING THE QUESTION AS TO WHETHER A DEVOLUTION ISSUE ARISES**

- 5.1** Where a party to any form of proceedings wishes to raise an issue which may be a devolution issue whether as a claim (or part of a claim) to enforce or establish a legal right or to seek a remedy or as a defence (or part of a defence), the provisions of this Practice Direction apply in addition to the rules of procedure applicable to the proceedings in which the issue arises.
- 5.2** A court may, of its own volition, require the question of whether a devolution issue arises to be considered, if the materials put before the court indicate such an issue may arise, even if the parties have not used the term 'devolution issue'.

### **DETERMINATION BY A COURT OF WHETHER A DEVOLUTION ISSUE ARISES**

- 6.1** The court may give such directions as it considers appropriate to obtain clarification or additional information to establish whether a devolution issue arises.
- 6.2** In determining whether a devolution issue arises the court, notwithstanding the contention of a party to the proceedings, may decide that a devolution issue shall not be taken to arise if the contention appears to the court to be frivolous or vexatious (paragraph 2 of schedule 8 to the GWA).
- 6.3** If the court determines that a devolution issue arises it must state what that devolution issue is clearly and concisely.

### **NOTICE OF DEVOLUTION ISSUE TO THE ATTORNEY GENERAL AND THE ASSEMBLY**

- 7.1** If a court determines that a devolution issue arises in the proceedings, it must order a devolution issue notice substantially in the form numbered 'DI 1' in Annex 1 to be given to

the Attorney General and the Assembly unless they are already a party to the proceedings (paragraph 5(1), schedule 8 to the GWA).

- 7.2** A court receiving a reference does not have to serve a devolution issue notice unless it determines that a devolution issue that was not identified by the court making the reference has arisen. In that case the court receiving the reference must serve a devolution issue notice which must:
- (1) state what devolution issue has been referred to it;
  - (2) state what further devolution issue has arisen; and
  - (3) identify the referring court.
- 7.3** If the devolution issue has arisen in criminal proceedings, the devolution issue notice must state:
- (1) whether the proceedings have been adjourned;
  - (2) whether the defendant is remanded in custody; and
  - (3) if the defendant has been remanded in custody and his trial has not commenced, when the custody time limit expires<sup>1</sup>.
- 7.4** If the devolution issue arises in an appeal, the devolution issue notice must:
- (1) state that the devolution issue arises in an appeal;
  - (2) identify the court whose decision is being appealed; and
  - (3) state whether the devolution issue is raised for the first time on appeal; or, if it is not, state that the devolution issue was raised in the court whose decision is being appealed, what decision was reached by that court, and the date of the previous notice to the Attorney General and the Assembly.
- 7.5** The devolution issue notice will specify a date which will be 14 days, or such longer period as the court may direct (see below), after the date of the devolution issue notice as the date by which the Attorney General or the Assembly must notify the court that he or it wishes to take part as a party to the proceedings, so far as they relate to a devolution issue.
- 7.6** The court may, in exceptional circumstances, specify a date longer than 14 days after the date of the devolution issue notice as the date by which the Attorney General and the Assembly must notify the court that he or it wishes to take part as a party to the proceedings. The court may do this before the notice is given, or before or after the expiry of the period given in the notice.
- 7.7**
- (1) On the date of the devolution issue notice,
    - (a) the devolution issue notice for the Attorney General must be faxed to him by the court<sup>2</sup>; and
    - (b) the devolution issue notice for the Assembly must be faxed by the court to the Counsel General for the Assembly.
  - (2) On the same day as a fax is sent a copy of the devolution issue notice must be sent by the court by first class post to the Attorney General and the Counsel General for the Assembly.
- 7.8** The court may, on such terms as it considers appropriate, order such additional documents to be served (e.g. in civil proceedings, the claim form) or additional information to be supplied with the devolution issue notice.

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<sup>1</sup> Custody time limits are imposed by the Prosecution of Offences (Custody Time Limits) Regulations 1987 as amended.

<sup>2</sup> See Annex 2 for information about fax numbers and addresses.

## **7.9**

- (1) When a court orders a devolution issue notice to be given the court may make such further orders as it thinks fit in relation to any adjournment, stay, continuance of the proceedings, or interim measures, during the period within which the Attorney General and the Assembly have to notify the court if they intend to take part as a party to the proceedings.
  - (2) Before ordering an adjournment in criminal proceedings, the court will consider all material circumstances, including whether it would involve delay that might extend beyond the custody time limits if the defendant is remanded in custody and his trial has not commenced.
- 7.10** If neither the Attorney General nor the Assembly notify the court within the specified time that he or it wishes to take part as a party to the proceedings:
- (1) the proceedings should immediately continue on expiry of the period within which they had to notify the court; and
  - (2) the court has no duty to inform them of the outcome of the proceedings apart from the duty to notify them if the court decides to refer the devolution issue to another court (see paragraph 10.3(5)).<sup>1</sup>

## **ADDING THE ATTORNEY GENERAL OR THE ASSEMBLY TO THE PROCEEDINGS AND THEIR RIGHT TO REQUIRE REFERRAL OF A DEVOLUTION ISSUE TO THE JUDICIAL COMMITTEE**

- 8.1** If the Attorney General or the Assembly wishes to take part as a party to the proceedings so far as they relate to a devolution issue, he or it must send to the court and the other parties (and to each other if only one of them has become a party) a notice substantially in the form numbered 'DI 2' shown in Annex 1 within the time specified in the devolution issue notice.
- 8.2** On receipt of this form the court may give such consequential directions as it considers necessary.
- 8.3** If the Attorney General or the Assembly is a party to the proceedings, and either of them wishes to require the court to refer the devolution issue to the Judicial Committee, he or it must as soon as practicable send to the court and the other parties (and to each other if only one of them has become a party) a notice substantially in the form numbered 'DI 3' shown in Annex 1.

## **DETERMINATION BY THE COURT OF WHETHER OR NOT TO MAKE A REFERENCE OF A DEVOLUTION ISSUE IF THE ATTORNEY GENERAL OR THE ASSEMBLY DO NOT REQUIRE A REFERENCE**

- 9.1** If the court is not required to refer the devolution issue to the Judicial Committee, the court will decide whether it should refer the devolution issue to the relevant court as specified in paragraph 3.4.

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<sup>1</sup> If there is an appeal, the appeal court will serve a devolution issue notice on the Attorney General and the Assembly (see paragraph 7.4).

- 9.2** Before deciding whether to make a reference the court may hold a directions hearing or give written directions as to the making of submissions on the question of whether to make a reference.
- 9.3** The court may make a decision on the basis of written submissions if its procedures permit this and it wishes to do so, or the court may have a hearing before making a decision.
- 9.4** In exercising its discretion as to whether to make a reference, the court will have regard to all relevant circumstances and in particular to:
- (1) the importance of the devolution issue to the public in general;
  - (2) the importance of the devolution issue to the original parties to the proceedings;
  - (3) whether a decision on the reference of the devolution issue will be decisive of the matters in dispute between the parties;
  - (4) whether all the relevant findings of fact have been made (a devolution issue will not, unless there are exceptional circumstances, be suitable for a reference if it has to be referred on the basis of assumed facts);
  - (5) the delay that a reference would entail particularly in cases involving children and criminal cases (including whether the reference is likely to involve delay that would extend beyond the expiry of the custody time limits if the defendant is remanded in custody and his trial has not commenced); and
  - (6) additional costs that a reference might involve<sup>1</sup>.
- 9.5** The court should state its reasons for making or declining to make a reference.
- 9.6** If the court decides not to refer the case, it will give directions for the future conduct of the action, which will include directions as to the participation of the Attorney General and the Assembly if they are parties.

## FORM AND PROCEDURE FOR REFERENCES

- 10.1** If the court or tribunal is required by the Attorney General or the Assembly (in relation to any proceedings before the court to which he or it is a party) to refer the devolution issue to the Judicial Committee:
- (1) the court or tribunal will make the reference as soon as practicable after receiving the notice from the Attorney General or the Assembly substantially in the form numbered 'DI 3' shown in Annex 1, and follow the procedure for references in the Judicial Committee (Devolution Issues) Rules Order 1999; and
  - (2) the court or tribunal may order the parties, or any of them, to draft the reference.
- 10.2** If the Court of Appeal decides to refer the devolution issue to the Judicial Committee:
- (1) it will follow the procedure in the Judicial Committee (Devolution Issues) Rules Order 1999; and
  - (2) the court may order the parties, or any of them, to draft the reference.
- 10.3** If any other court or tribunal decides, or if a tribunal is required, to refer the devolution issue to another court:
- (1) the reference must be substantially in the form numbered 'DI 4' shown in Annex 1 and must set out the following:

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<sup>1</sup> In criminal cases section 16 of the Prosecution of Offences Act 1985 does not enable a court receiving a reference to make a defendant's costs order. If the defendant is subsequently acquitted by the court who made the reference that court can make a defendant's costs order. However it would not cover the costs of the reference as 'proceedings' is defined in section 21 as including proceedings in any court below but makes no mention of proceedings on a reference.

- (a) the question referred;
  - (b) the addresses of the parties, except in the case of family proceedings, for which see paragraphs 15.2-4;
  - (c) a concise statement of the background of the matter including –
    - (i) the facts of the case, including any relevant findings of fact by the referring court or lower courts; and
    - (ii) the main issues in the case and the contentions of the parties with regard to them;
  - (d) the relevant law, including the relevant provisions of the GWA;
  - (e) the reasons why an answer to the question is considered necessary for the purpose of disposing of the proceedings;
- (2) all judgments already given in the proceedings will be annexed to the reference;
  - (3) the court may order the parties, or any of them, to draft the reference;
  - (4) the court or tribunal will transmit the reference to:
    - (a) the Civil Appeals Office Registry if the reference is to the Court of Appeal from a county court, the High Court or the Crown Court in civil proceedings, or from a tribunal;
    - (b) the Registrar of Criminal Appeals if the reference is to the Court of Appeal from the Crown Court in proceedings on indictment; and
    - (c) the Administrative Court Office if the reference is to the High Court from a magistrates' court in civil or summary proceedings or from the Crown Court in summary proceedings<sup>1</sup>.

If the reference is transmitted to Cardiff an additional copy of the reference must be filed so that it can be retained by the Cardiff Office. The original reference will be forwarded to the Administrative Court Office in London.
  - (5) at the same time as the reference is transmitted to the court receiving the reference a copy of the reference will be sent by first class post to:
    - (a) the parties;
    - (b) the Attorney General if he is not already a party; and
    - (c) the Assembly if it is not already a party;
  - (6) each person on whom a copy of the reference is served must within 21 days notify the court to which the reference is transmitted and the other persons on whom the reference is served whether they wish to be heard on the reference;
  - (7) the court receiving the reference (either the Court of Appeal or the High Court) will give directions for the conduct of the reference, including the lodging of cases or skeleton arguments; and transmit a copy of the determination on the reference to the referring court; and
  - (8) if there has been an appeal to the Judicial Committee against a decision of the High Court or the Court of Appeal on a reference, and a copy of the Judicial Committee's decision on that appeal has been sent to the High Court or Court of Appeal (as the case may be), that court will send a copy to the court which referred the devolution issue to it.

**10.4** When a court receives notification of the decision on a reference, it will determine how to proceed with the remainder of the case.

<sup>1</sup> See Annex 2 for the relevant addresses. It shows The Law Courts, Cathays Park, Cardiff, CF10 3PG and the Royal Courts of Justice, Strand, London WC2A 2LL as alternative addresses for transmitting documents to the Administrative Court Office. If the order is transmitted to Cardiff, the additional copy will be forwarded by the Cardiff Office to the Administrative Court Office in London.

## POWER OF THE COURT TO DEAL WITH PENDING PROCEEDINGS IF A REFERENCE IS MADE (WHETHER BY THE ATTORNEY GENERAL, THE ASSEMBLY OR THE COURT)

- 11.** If a reference is made the court will adjourn or stay the proceedings in which the devolution issue arose, unless it otherwise orders; and will make such further orders as it thinks fit in relation to any adjournment or stay.

## THE WELSH LANGUAGE

- 12.1** If any party wishes to put forward a contention in relation to a devolution issue that involves comparison of the Welsh and English texts of any Assembly subordinate legislation, that party must give notice to the court as soon as possible.
- 12.2** Upon receipt of the notification, the court will consider the appropriate means of determining the issue, including, if necessary, the appointment of a Welsh speaking judicial assessor to assist the court.
- 12.3** Parties to any proceedings in which the Welsh language may be used must also comply with the Practice Direction of 16<sup>th</sup> October 1998 (relating to proceedings in the Crown Court) and the Practice Direction of 26<sup>th</sup> April 1999 (relating to civil proceedings). These Practice Directions apply, as appropriate, to proceedings involving a devolution issue in which the Welsh language may be used.

## CROWN PROCEEDINGS ACT 1947 (SECTION 19)

- 13.** Where the court has determined that a devolution issue arises, the Attorney General will give any necessary consent to:
- (1)** the proceedings being transferred to The Law Courts, Cathays Park, Cardiff, CF 10 3PG, or to such other district registry as shall (exceptionally) be directed by the court; and
  - (2)** to the trial taking place at Cardiff or at such other trial location as shall (exceptionally) be directed by the court.

## PART III DIRECTIONS APPLICABLE TO SPECIFIC PROCEEDINGS

### JUDICIAL REVIEW PROCEEDINGS

- 14.1** Practice Direction 54D contains provisions about where judicial review proceedings may be started in the Administrative Court.



## FAMILY PROCEEDINGS IN THE MAGISTRATES' COURTS, THE COUNTY COURTS AND THE HIGH COURT

- 15.1** In any proceedings in which any question with respect to the upbringing of a child arises, the court shall have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child<sup>1</sup>.
- 15.2** If the FPR apply, the court will comply with rule 10.21.<sup>2</sup>
- 15.3** If Part IV of the FPR applies, the court will comply with rule 4.23.<sup>3</sup>
- 15.4** If the FPC apply, the court will comply with Rules 23 and 33A<sup>4</sup>.
- 15.5** If the proceedings are listed in column (i) of Appendix 3 to the FPR or Schedule 2 to the FPC, a copy of any notice to be given to the parties must also be given to the persons set out in column (iv) of Appendix 3 or Schedule 2 as the case may be.
- 15.6** A party wishing to raise a devolution issue must, wherever possible, raise it (giving full particulars of the provisions relied on) in the application or answer or at the first directions hearing where appropriate.
- 15.7** If a party has not raised a devolution issue as above, the party must seek the permission of the court to raise it at a later stage.
- 15.8** Where a court has referred the devolution issue to another court and has received notification of the decision on the reference, the matter should so far as is practicable be placed before the same judge or magistrates who dealt with the case before the reference.

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<sup>1</sup> Section 1(2), Children Act 1989.

<sup>2</sup> Rule 10.21 states: (1) Subject to rule 2.3 [of the FPR] nothing in these rules shall be construed as requiring any party to reveal the address of their private residence (or that of any child) save by order of the court. (2) Where a party declines to reveal an address in reliance upon paragraph (1) above, he shall give notice of that address to the court in Form C8 and that address shall not be revealed to any person save by order of the court.

<sup>3</sup> Rule 4.23 states: (1) Notwithstanding any rule of court to the contrary, no document, other than a record of an order, held by the court and relating to proceedings to which [Part IV] applies shall be disclosed, other than to – (a) a party, (b) the legal representative of a party (c) the guardian ad litem, (d) the Legal Aid Board, or (e) a welfare officer, without the leave of the judge or the district judge. (2) Nothing in this rule shall prevent the notification by the court or the proper officer of a direction under section 37(1) to the authority concerned. (3) Nothing in this rule shall prevent the disclosure of a document prepared by a guardian ad litem for the purpose of – (a) enabling a person to perform functions required by regulations made under section 41(7); (b) assisting a guardian ad litem or a reporting officer (within the meaning of section 65(1)(b) of the Adoption Act 1976) who is appointed under any enactment to perform his functions.

<sup>4</sup> Rule 23 states: (1) No document, other than a record of an order, held by the court and relating to relevant proceedings shall be disclosed, other than to – (a) a party, (b) the legal representative of a party, (c) the guardian ad litem, (d) the Legal Aid Board, or (e) a welfare officer, without leave of the justices' clerk or the court. (2) Nothing in this rule shall prevent the notification by the court or the justices' clerk of a direction under section 37(1) to the authority concerned. (3) Nothing in this rule shall prevent the disclosure of a document prepared by a guardian ad litem for the purpose of – (a) enabling a person to perform functions required by regulations made under section 41(7); (b) assisting a guardian ad litem or a reporting officer (within the meaning of section 65(1)(b) of the Adoption Act 1976) who is appointed under any enactment to perform his functions.

Rule 33A states: (1) Nothing in these Rules shall be construed as requiring any party to reveal the address of their private residence (or that of any child) except by order of the court. (2) Where a party declines to reveal an address in reliance upon paragraph (1) he shall give notice of that address to the court in Form C8 and that address shall not be revealed to any person except by order of the court.

## CIVIL PROCEEDINGS IN THE COUNTY COURTS AND THE HIGH COURT

- 16.1** A party wishing to raise a devolution issue must specify in the claim form, or if he is a defendant, in the defence (or written evidence filed with the acknowledgement of service in a Part 8 claim) that the claim raises a devolution issue and the relevant provisions of the GWA.
- 16.2** The particulars of claim or defence if the devolution issue is raised by the defendant (or written evidence filed with the acknowledgement of service in a Part 8 claim) must contain the facts and circumstances and points of law on the basis of which it is alleged that a devolution issue arises in sufficient detail to enable the court to determine whether a devolution issue arises in the proceedings.
- 16.3** Whether or not the allocation rules apply, if a question is raised during the proceedings that might be a devolution issue, then a directions hearing must take place and the matter must be referred to a circuit judge (in county court actions) or a High Court judge (in High Court actions) for determination as to whether a devolution issue arises and for further directions.
- 16.4** If a party fails to specify in the appropriate document that a devolution issue arises but that party subsequently wishes to raise a devolution issue, that party must seek the permission of the court.
- 16.5** Where any party has specified that a devolution issue arises, no default judgment can be obtained.

## CRIMINAL PROCEEDINGS IN THE CROWN COURT

- 17.** If the defendant wishes to raise a devolution issue he should do so at the Plea and Directions Hearing.

## CRIMINAL AND CIVIL PROCEEDINGS IN THE MAGISTRATES' COURTS

- 18.1**
- (1)** Where a defendant, who has been charged or has had an information laid against him in respect of a criminal offence and has entered a plea of 'Not Guilty', wishes to raise a devolution issue he should, wherever possible, give full particulars of the provisions relied on by notice in writing.
  - (2)** Where a party to a complaint, or applicant for a licence wishes to raise a devolution issue he should, wherever possible, give full particulars of the provisions relied on by notice in writing.
  - (3)** Such notice should be given to the prosecution (and other party if any) and the court as soon as practicable after the 'Not Guilty' plea is entered or the complaint or application is made as the case may be.
- 18.2** Where proceedings are to be committed or transferred to the Crown Court by the magistrates, the question as to whether a devolution issue arises shall be a matter for the Crown Court.

## PART IV APPEALS

### APPEALS TO THE COURT OF APPEAL (CIVIL AND CRIMINAL DIVISION)

- 19.1** This paragraph applies if a devolution issue is raised in any appeal to either the Civil or the Criminal Division of the Court of Appeal.
- 19.2** The devolution issue may already have been raised in the court whose decision is being appealed. The devolution issue may, however, be raised for the first time on appeal.
- 19.3** Where an application for permission to appeal is made, or an appeal is brought where permission is not needed, the appellant must specify in the application notice (or the notice of appeal or notice of motion as the case may be):
- (1) that the appeal raises a devolution issue and the relevant provisions of the GWA;
  - (2) the facts and circumstances and points of law on the basis of which it is alleged that a devolution issue arises in sufficient detail to enable the court to determine whether a devolution issue arises; and
  - (3) whether the devolution issue was considered in the court below, and, if so, provide details of the decision.
- 19.4** An appellant may not seek to raise a devolution issue without the permission of the court after he has filed an application notice; or a notice of appeal or notice of motion (if no application notice).
- 19.5** Where permission to appeal is sought and a party to the appeal wishes to raise a devolution issue which was not raised in the lower court, the court will determine if a devolution issue arises before deciding whether to grant leave to appeal.

### APPEALS TO THE CROWN COURT

- 20.** A notice of appeal from a decision of the magistrates' courts to the Crown Court must specify whether the devolution issue was considered in the court below and if so, provide details of the decision. If it was not so considered, the notice should specify:
- (1) that the appeal raises a devolution issue and the relevant provisions of the GWA; and
  - (2) the facts and circumstances and points of law on the basis of which it is alleged that a devolution issue arises in sufficient detail to enable the court to determine whether a devolution issue arises.

# ANNEX 1

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## DI 1

### DEVOLUTION ISSUES

#### NOTICE OF DEVOLUTION ISSUE TO ATTORNEY GENERAL AND THE NATIONAL ASSEMBLY FOR WALES

[ NAME OF CASE ]

Take notice that the above mentioned case has raised a devolution issue as defined by Schedule 8 to the Government of Wales Act 1998. Details of the devolution issue are given in the attached schedule.

This notice meets the notification requirements under paragraph 5(1) of Schedule 8 to the Government of Wales Act 1998. You may take part as a party to these proceedings, so far as they relate to a devolution issue (paragraph 5(2) of Schedule 8). If you want to do this you must notify the court by completing the attached form, and returning it to the court at [ address ] by [ date ].

DATED

To: The Attorney General

The National Assembly for Wales

Other parties (where appropriate)

## DI 2

### DEVOLUTION ISSUES

#### NOTICE OF INTENTION OF ATTORNEY GENERAL OR THE NATIONAL ASSEMBLY FOR WALES TO BECOME PARTY TO PROCEEDINGS, SO FAR AS THEY RELATE TO A DEVOLUTION ISSUE, UNDER PARAGRAPH 5(2) SCHEDULE 8 TO THE GOVERNMENT OF WALES ACT 1998

In the [ name of court ]

[ case name ]

Take notice that the [ Attorney General ] [ the National Assembly for Wales ] intends to take part as a party to proceedings so far as they relate to a devolution issue as permitted by paragraph 5(2) of Schedule 8 to the Government of Wales Act 1998 in relation to the devolution issue raised by [ ], of which notice was received by the [ Attorney General ] [ Assembly ] on [ ].

[ The [ ] also gives notice that it [ requires the matter to be referred to ] [ is still considering whether to require the matter to be referred to ] the Judicial Committee of the Privy Council under paragraph 30 of Schedule 8 to the Government of Wales Act 1998. ]

[ DATE ]

On behalf of the [ Attorney General ]

[ National Assembly for Wales ]

To: The clerk of the court at [ ]

The parties to the case

[ Attorney General] [ National Assembly for Wales ]

## **DI 3**

### **DEVOLUTION ISSUES**

#### **NOTICE BY ATTORNEY GENERAL OR NATIONAL ASSEMBLY FOR WALES THAT THEY REQUIRE DEVOLUTION ISSUE TO BE REFERRED TO THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL**

In the [ court ]  
[ case name ]

The [ Attorney General ] [ National Assembly for Wales ] gives notice that the devolution issue, which has been raised in the above case and to which [ he ] [ it ] is a party, must be referred to the Judicial Committee of the Privy Council under blocktextgraph 30 of Schedule 8 to the Government of Wales Act 1998.

[ DATE ]

On behalf of the [ Attorney General ]  
[ National Assembly for Wales ]

To: The clerk of the court at [ ]

The parties to the case

[ Attorney General] [ National Assembly for Wales ]

## **DI 4**

### **DEVOLUTION ISSUES**

#### **REFERENCE BY THE COURT OR TRIBUNAL OF DEVOLUTION ISSUE TO [ HIGH COURT ] [ COURT OF APPEAL ] [ JUDICIAL COMMITTEE OF THE PRIVY COUNCIL ]**

In the [ court ]

[ case name ]

It is ordered that the devolution issue(s) set out in the schedule be referred to the [ High Court ] [ Court of Appeal ] [ Judicial Committee of the Privy Council ] for determination in accordance with paragraph [ ] of Schedule 8 to the Government of Wales Act 1998.

It is further ordered that the proceedings be stayed until the [ High Court ] [ Court of Appeal ] [ Judicial Committee of the Privy Council ] determine the devolution issue[s] or until further order.

DATED

Judge/clerk to the magistrates court

Chairman of the Tribunal

[ Address ]

## **SKELETON REFERENCE TO BE ATTACHED TO FORM DI 4**

In the [ court ]

[ case name ]

- (a) [ The question referred]
  - (b) [ The addresses of the parties ]
  - (c) [ A concise statement of the background to the matters including –
    - (i.) The facts of the case including any relevant findings of fact by the referring court or lower courts; and
    - (ii.) The main issues in the case and the contentions of the parties with regard to them];
  - (d) [ the relevant law including the relevant provisions of the Government of Wales Act 1998 ]
  - (e) [ the reasons why an answer to the question is considered necessary for the purpose of disposing of the proceedings. ]
- [ All judgments already given in the proceedings are annexed to this reference. ]



## ANNEX 2

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### ADDRESSES

- (1) Notices to the National Assembly for Wales (*Cynulliad Cenedlaethol Cymru*) must be sent to the Counsel General to the National Assembly for Wales, Crown Buildings, Cathays Park, Cardiff CF99 1NA. Fax number: (01222) 826798.
- (2) Notices to the Attorney General must be sent to the Attorney General's Chambers, 9 Buckingham Gate, London, SW1E 6JP. Fax number 0171 271 2433.

### EXPLANATORY NOTE

- (4) The addresses and fax numbers above are the best information available. However it is possible that these (particularly the fax numbers and address for Notices to the Assembly) may change. It would therefore be advisable to confirm the numbers before sending information.

