

CHAPTER 25A

COMPATIBILITY QUESTIONS AND DEVOLUTION ISSUES

Interpretation of this Chapter

25A.1. In this Chapter—

“the 2024 Act” means the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024;

“compatibility question” has the meaning given by section 31(1) of the 2024 Act;

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

- (a) Schedule 6 of the Scotland Act 1998;
- (b) Schedule 10 of the Northern Ireland Act 1998; or
- (c) Schedule 9 of the Government of Wales Act 2006,

and any reference to Schedule 6, Schedule 10 or Schedule 9 is a reference to that Schedule in that Act;

“relevant authority” means—

- (a) in respect of a compatibility question, the Commissioner for Children and Young People in Scotland, the Lord Advocate and the Scottish Commission for Human Rights;
- (b) in any other case, the Advocate General for Scotland and—
 - (i) in the case of a devolution issue within the meaning of Schedule 6, the Lord Advocate;
 - (ii) 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;
 - (iii) in the case of a devolution issue within the meaning of Schedule 9, the Counsel General to the Welsh Government.

Proceedings where compatibility question or devolution issue raised in principal writ

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

Time for raising compatibility question or devolution issue

25A.3.—(1) It is not competent for a party to any proceedings to raise a compatibility question or 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 compatibility question or devolution issue may be raised as mentioned in paragraph (1), it is to make such orders as to the procedure to be followed as appear to it to be appropriate and, in particular, is to make such orders—

- (a) as are necessary to ensure that intimation of the compatibility question is given in writing to the relevant authority for the purposes of section 34(1) of the 2024 Act;
- (b) 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 9,

and as to the time in which any step is to be taken by any party in the proceedings.

Specification of compatibility question or devolution issue

25A.4.—(1) Any party raising a compatibility question must specify—

- (a) where the party initiates the action, in the principal writ;
- (b) where a counterclaim is lodged, in the counterclaim; or
- (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 compatibility question arises in sufficient detail to enable the court to determine, for the purposes of section 31(3) of the 2024 Act, whether a compatibility question arises in the proceedings.

(2) Any party raising a devolution issue must specify—

- (a) where the party initiates the action, in the principal writ;
- (b) where a counterclaim is lodged, in the counterclaim; or
- (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 9, whether a devolution issue arises in the proceedings.

(3) Where a party wishes to raise a compatibility question or devolution issue after the lodging of any writ mentioned in paragraph (1) or (2) respectively, the party must do so either by adjustment or amendment so as to specify in the party's pleadings the matters in that respective paragraph.

Intimation

25A.5.—(1) Intimation of—

- (a) a compatibility question in pursuance of section 34(1) of the 2024 Act;
- (b) 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 9,

must be given to the relevant authority (unless already a party to the proceedings or where it has been served with the principal writ in pursuance of rule 25A.2) in accordance with this rule.

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

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

(4) The intimation of a compatibility question or a devolution issue is to 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 its intention to take part as a party in the proceedings as mentioned in, respectively—

- (a) section 34(2) of the 2024 Act;
- (b) paragraph 6 of Schedule 6 or, as the case may be, paragraph 24 of Schedule 10 or paragraph 14(2) of Schedule 9.

Intimation of reclaiming motion or application to the nobile officium of the court

25A.6. Where, after determination at first instance of any proceedings in which a compatibility question or devolution issue has been raised, a party to those proceedings—

- (a) marks a reclaiming motion under rule 38.6; or
- (b) makes an application to the nobile officium of the court under rule 14.3,

that party must, unless the relevant authority is already party to the proceedings, at the same time intimate the motion to, or seek leave to serve the petition on, the relevant authority together with a notice in Form 25A.6.

Response to intimation

25A.7.—(1) Where a relevant authority gives notice as mentioned in rule 25A.5(4), it must, not later than 7 days after the date of such notice, lodge a minute of its written

submissions in respect of the compatibility question or devolution issue together with conclusions and pleas in law as appropriate.

(2) Where a relevant authority does not take part as a party in the proceedings at first instance the court may allow it to take part as a party in any subsequent appeal, reclaiming motion or reference to a higher court.

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

Reference to Inner House

25A.8.—(1) Where a compatibility question or devolution issue arises in any proceedings before the Lord Ordinary, any reference of the compatibility question or devolution issue to the Inner House as mentioned in—

- (a) section 35(1) of the 2024 Act;
- (b) paragraph 7 of Schedule 6 or, as the case may be, paragraph 25 of Schedule 10 or paragraph 15 of Schedule 9,

is to be by means of a report in accordance with Chapter 34 of these Rules.

(2) Where, in any proceedings before the Lord Ordinary, reference of a compatibility question or devolution issue is made to the Inner House, the Deputy Principal Clerk must, unless the relevant authority is already party to the proceedings, not later than 7 days after the reference has been made, give notice of the reference in Form 25A.8 to the relevant authority.

Reference to Supreme Court

25A.9.—(1) Where the court—

- (a) decides in accordance with section 35(3) of the 2024 Act; or
- (b) is required as mentioned in section 36 of the 2024 Act,

to refer a compatibility question to the Supreme Court, it is to pronounce an interlocutor giving directions to the parties about the manner and time in which the reference is to be drafted and adjusted.

(2) 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 9; 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 29(1) of Schedule 9,

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

(3) When the reference has been drafted at the sight of the court, the court is to make and sign the reference.

(4) The reference is to include such matter as may be required by Practice Direction 10 of the Supreme Court, and is to have annexed to it the interlocutor making the reference.

(5) Service of the reference in accordance with Practice Direction 10 of the Supreme Court may be effected by the Deputy Principal Clerk by first class recorded delivery post.

Sist of cause on reference to Supreme Court

25A.10.—(1) Subject to paragraph (2), on a reference being made to the Supreme Court as mentioned in rule 25A.9, the cause is, unless the court when making the reference otherwise orders, to be sisted until the Supreme Court has determined the compatibility question or 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.11.—(1) The reference must be transmitted by the Deputy Principal Clerk to the Registrar of the Supreme Court.

(2) Unless the court otherwise directs, the reference must not be sent to the Registrar of the Supreme Court 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 is to 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 Supreme Court

25A.12.—(1) Where an appeal to the Supreme Court is made—

- (a) under section 35(4) of the 2024 Act;
- (b) with permission under section 35(5)(a) or (b) of the 2024 Act;
- (c) under paragraph 12 of Schedule 6 or, as the case may be, paragraph 30 of Schedule 10 or paragraph 20 of Schedule 9; or
- (d) 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 9,

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 Supreme Court, including orders relating to interim possession, execution and expenses already incurred.

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

Orders mitigating the effect of certain decisions

25A.13.—(1) In any proceedings where the court is considering making an order under section 25(5) of the 2024 Act, the court is to order intimation of the fact to be made by the Deputy Principal Clerk to the Lord Advocate (unless the Lord Advocate is a party to the proceedings).

(2) Intimation as mentioned in paragraph (1) is to—

- (a) be made forthwith in Form 25A.13A 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 the Lord Advocate may give notice of the Lord Advocate's intention to take part as a party in the proceedings.

(3) 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 153 of the Government of Wales Act 2006,

the court is to 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.

(4) Intimation as mentioned in paragraph (3) is to—

- (a) be made forthwith in Form 25A.13B 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 their intention to take part in the proceedings.