

# REFERENCE by the Lord Advocate of devolution issues under paragraph 34 of Schedule 6 to the Scotland Act 1998

Case ID: 2022/0098

## Case summary

### Issues

(1) Is the question referred by the Lord Advocate a “devolution issue”? If not, it cannot be the subject of a reference under paragraph 34 of Schedule 6, which would mean that the Court does not have jurisdiction to decide it.

(2) Even if the question referred by the Lord Advocate is a devolution issue, should the Court decline to determine the reference as a matter of its inherent discretion?

(3) Does the provision of the proposed Scottish Independence Referendum Bill that provides that the question to be asked in a referendum would be “Should Scotland be an independent country?” relate to reserved matters? In particular, does it relate to: (i) the Union of the Kingdoms of Scotland and England; and/or (ii) the Parliament of the United Kingdom?

### Facts

The Scottish Parliament has the power to make laws for Scotland (section 28(1) of the Scotland Act 1998 (“SA”). However, a provision of an Act of the Scottish Parliament is not law so far as the provision is outside the legislative competence of the Scottish Parliament (section 29(1) SA). A provision is outside legislative competence if it “relates to reserved matters” (section 29(2)(b) SA). Whether a provision “relates to” a reserved matter is determined “by reference to the purpose of the provision, having regard (among other things) to its effect in all the circumstances” (section 29(3) SA). Reserved matters include both “the Union of the Kingdoms of Scotland and England” and “the Parliament of the United Kingdom” (paras 1(b) and (c) Schedule 5 SA, respectively).

The SA allows the Lord Advocate to “refer to the Supreme Court any devolution issue which is not the subject of proceedings” (para 34 of Schedule 6 SA). A “devolution issue” includes “any other question arising by virtue of this Act about reserved matters” (para 1(f) of Schedule 6 SA).

This reference concerns the proposed Scottish Independence Reference Bill. The Bill makes provision for a referendum on Scottish independence. The question would be “Should Scotland be an independent country?”. The key issue in this reference is whether the proposed provision relates to reserved matters.

### Judgment appealed

### Parties

#### Appellant(s)

Lord Advocate

#### Respondent(s)

Advocate General

#### Intervener

Scottish National Party

## **Appeal**

### **Justices**

Lord Reed, Lord Lloyd-Jones, Lord Sales, Lord Stephens, Lady Rose

### **Hearing start date**

11 October 2022

### **Hearing finish date**

12 October 2022

### **Watch hearing**

11 Oct 2022 [Morning session](#) [Afternoon session](#)

12 Oct 2022 [Morning session](#) [Afternoon session](#)