



Scotland Act 2012

2012 CHAPTER 11

PART 4

MISCELLANEOUS AND GENERAL

Miscellaneous

34 Convention rights and EU law: role of Advocate General in relation to criminal proceedings

- (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.
- (2) For the italic heading before section 288A substitute “Convention rights and EU law compatibility issues, and devolution issues”.
- (3) After that heading insert—

“288ZA Right of Advocate General to take part in proceedings

- (1) The Advocate General for Scotland may take part as a party in criminal proceedings so far as they relate to a compatibility issue.
- (2) In this section “compatibility issue” means a question, arising in criminal proceedings, as to—
 - (a) whether a public authority has acted (or proposes to act)—
 - (i) in a way which is made unlawful by section 6(1) of the Human Rights Act 1998, or
 - (ii) in a way which is incompatible with EU law, or
 - (b) whether an Act of the Scottish Parliament or any provision of an Act of the Scottish Parliament is incompatible with any of the Convention rights or with EU law.
- (3) In subsection (2)—

Status: This is the original version (as it was originally enacted).

- (a) “public authority” has the same meaning as in section 6 of the Human Rights Act 1998;
 - (b) references to acting include failing to act;
 - (c) “EU law” has the meaning given by section 126(9) of the Scotland Act 1998.”
- (4) Section 288A (rights of appeal for Advocate General: devolution issues) is amended as follows.
- (5) In the heading, before “devolution issues” insert “compatibility issues and”.
- (6) In subsection (1) omit “in pursuance of paragraph 6 of Schedule 6 to the Scotland Act 1998 (devolution issues)”.
- (7) For subsection (2) substitute—
 - “(2) Where the Advocate General for Scotland was a party in pursuance of paragraph 6 of Schedule 6 to the Scotland Act 1998 (devolution issues), the Advocate General may refer to the High Court for their opinion any devolution issue which has arisen in the proceedings.
 - (2A) Where the Advocate General for Scotland was a party in pursuance of section 288ZA, the Advocate General may refer to the High Court for their opinion any compatibility issue (within the meaning of that section) which has arisen in the proceedings.
 - (2B) If a reference is made under subsection (2) or (2A) the Clerk of Justiciary shall send to the person acquitted or convicted and to any solicitor who acted for that person at the trial a copy of the reference and intimation of the date fixed by the Court for a hearing.”
- (8) In subsection (6) after “(2)” insert “or (2A)”.