

# **CRIMINAL JUSTICE (SCOTLAND) ACT 2003**

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## **EXPLANATORY NOTES**

### **THE ACT THE ACT IS IN 12 PARTS.**

#### **Part 12 – Miscellaneous and General**

##### **Miscellaneous**

##### *Section 73 – Public defence*

403. *Section 73* amends the Legal Aid (Scotland) Act 1986 to allow a feasibility study into solicitors employed by the Scottish Legal Aid Board providing representation in criminal cases to continue after 1 October 2003.
404. Section 28A of the Legal Aid (Scotland) Act 1986 was inserted by the section 50 of the Crime and Punishment Act 1997 and amended by section 9(7) of the Convention Rights (Compliance) (Scotland) Act 2001. It provides for the Scottish Legal Aid Board directly to employ solicitors to provide representation in criminal cases.
405. Section 28A(2) provides for a maximum of 6 solicitors (full time or equivalent) to be employed by the Scottish Legal Aid Board at any time. This is repealed to allow the Board to employ additional solicitors in any new pilot location. Section 28A also provides that any solicitor employed by the Board on a casual or temporary basis shall require to be a solicitor registered on the Criminal Legal Assistance Register. This is also being repealed as section 25A(3) requires any solicitor providing criminal legal assistance to be so registered.
406. Section 28A(3) authorises the Board to make such preparations for the feasibility study detailed in subsection (1) as will enable it to begin the study as soon as regulations made under subsection (1) come into force. As the study began in 1999, this provision is now unnecessary.
407. Section 28A(10) requires the Scottish Ministers to lay before the Scottish Parliament within 3 years of the date in which regulations were made under subsection (1) a report on the results of the feasibility study. Such a report was laid in September 2001, so this provision is now spent. Section 73(b) of the Act inserts a new subsection (9A) to provide that a further report on the continuing progress of the study shall be laid before the Scottish Parliament by the end of 2008.
408. Section 28A(11) provides that section 28A and the provisions of the Act referred to in subsection (12) shall cease to have effect 5 years after the date on which regulations made under section 28A(1) first came into force (i.e. 1 October 2003). This subsection, along with subsections (12), (13) and (14), which make provisions consequential to subsection (11), are repealed by this section.
409. Section 28A(15) has the effect of ensuring that nothing in section 28A shall prevent the commencement of sections 26 to 28 of the Legal Aid (Scotland) Act 1986. These sections have now been commenced, so this subsection is also repealed.