

*These notes refer to the Scotland Act 2012 (c.11)
which received Royal Assent on 1st May 2012*

SCOTLAND ACT 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS (AND SCHEDULES)

Part 4: Miscellaneous

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

192. This section amends the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”). *Subsection (3)* inserts a new section 288ZA into the 1995 Act, subsections (2) and (3) of which contain a definition of a “compatibility issue” as a question raised in criminal proceedings as to:
- (a) whether a public authority has acted in way that is unlawful under section 6(1) of the Human Rights Act 1998 or incompatible with European Union law;
 - (b) whether an Act of the Scottish Parliament, or a provision of such an Act, is incompatible with the European Convention on Human Rights or with EU law.
193. The new section inserted by *subsection (3)* also gives the Advocate General for Scotland a right to take part in criminal proceedings so far as they relate to a compatibility issue. *Subsection (7)* amends section 288A of the 1995 Act to allow the Advocate General for Scotland, in certain circumstances, to refer a compatibility issue to the High Court for their opinion following the conclusion of trial proceedings.