

SCOTLAND ACT 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS (AND SCHEDULES)

Part 4: Miscellaneous

Section 36: Convention rights and EU law: criminal appeals to the Supreme Court

196. *Subsection (2)* amends section 57(3) of the 1998 Act so that acts or failures to act by the Lord Advocate in prosecuting any offence, or as head of the system of criminal prosecutions in Scotland, are not rendered *ultra vires* by virtue of section 57(2) of the 1998 Act.
197. *Subsection (3)* amends section 102 of the 1998 Act so that the Supreme Court may only determine the compatibility issue. The power to remove or limit any retrospective effect of that decision, or to suspend its effect, is to be exercised by the High Court.
198. *Subsection (4)* amends the definition of a “devolution issue” in paragraph 1 of Schedule 6 to the 1998 Act so that a matter which is a compatibility issue cannot also be a devolution issue.
199. *Subsections (5) and (6)* amend the 1995 Act to provide a right to appeal a compatibility issue from the High Court, constituted as an appeal court, to the Supreme Court. Such an appeal can only be made with the permission of the High Court or the Supreme Court (although such permission is not needed if the compatibility issue was referred to the High Court by the lower court at the request of the Lord Advocate or Advocate General for Scotland). An application for permission to appeal has to be made to the High Court within 28 days of the determination of the appeal or such longer period as the Court considers equitable. If the High Court refuses permission, an application to the Supreme Court has to be made within 28 days of the date of the High Court’s refusal of permission. Again the time limit can be extended if the Court considers this equitable.
200. *Subsections (5) and (6)* also provide that the new appeal right to the Supreme Court can only apply to the determination of a compatibility issue. The Supreme Court may reformulate the compatibility issue but it can only do this for the purpose of determining the compatibility issue. The powers of the Supreme Court can only be exercised to determine the compatibility issue and once the Court has done this it must to remit the proceedings to the High Court.