



# Scotland Act 2012

## 2012 CHAPTER 11

### PART 4

#### MISCELLANEOUS AND GENERAL

##### *Miscellaneous*

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

- (1) The 1998 Act is amended as follows.
- (2) In section 57(3) (EU law and Convention rights: excepted acts of the Lord Advocate) omit the words after paragraph (b).
- (3) In section 102 (powers of courts or tribunals to vary retrospective decisions)—
  - (a) in subsection (4)(b) at the end insert “ or to a compatibility issue, ”;
  - (b) after subsection (5) insert—

“(5A) Where the decision mentioned in subsection (1) is a decision of the Supreme Court on a compatibility issue, the power to make an order under this section is exercisable by the High Court of Justiciary instead of the Supreme Court.”;
  - (c) in subsection (7) before the definition of “intimation” insert—

““compatibility issue” has the meaning given by section 288ZA of the Criminal Procedure (Scotland) Act 1995,”.
- (4) In paragraph 1 of Schedule 6 (devolution issues), after sub-paragraph (f) insert—

“But a question arising in criminal proceedings in Scotland that would, apart from this paragraph, be a devolution issue is not a devolution issue if (however formulated) it relates to the compatibility with any of the Convention rights or with EU law of

  - (a) an Act of the Scottish Parliament or any provision of an Act of the Scottish Parliament,
  - (b) a function,

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- (c) the purported or proposed exercise of a function,
- (d) a failure to act.”

(5) The Criminal Procedure (Scotland) Act 1995 is amended as follows.

(6) After section 288A insert—

**“288AA Appeals to the Supreme Court: compatibility issues**

- (1) For the purpose of determining any compatibility issue an appeal lies to the Supreme Court against a determination in criminal proceedings by a court of two or more judges of the High Court.
- (2) On an appeal under this section—
  - (a) the powers of the Supreme Court are exercisable only for the purpose of determining the compatibility issue;
  - (b) for that purpose the Court may make any change in the formulation of that issue that it thinks necessary in the interests of justice.
- (3) When it has determined the compatibility issue the Supreme Court must remit the proceedings to the High Court.
- (4) In this section “compatibility issue” has the same meaning as in section 288ZA.
- (5) An appeal under this section against a determination lies only with the permission of the High Court or, failing that permission, with the permission of the Supreme Court.
- (6) Subsection (5) does not apply if it is an appeal by the Lord Advocate or the Advocate General for Scotland against a determination by the High Court of a compatibility issue referred to it under section 288ZB(2).
- (7) An application to the High Court for permission under subsection (5) must be made—
  - (a) within 28 days of the date of the determination against which the appeal lies, or
  - (b) within such longer period as the High Court considers equitable having regard to all the circumstances.
- (8) An application to the Supreme Court for permission under subsection (5) must be made—
  - (a) within 28 days of the date on which the High Court refused permission under that subsection, or
  - (b) within such longer period as the Supreme Court considers equitable having regard to all the circumstances.”

(7) Section 288B (appeals to the Supreme Court) is amended as follows.

(8) For the heading substitute “ Appeals to the Supreme Court: general ”.

(9) In subsection (1)—

- (a) after “under” insert “ section 288AA of this Act or ”;
- (b) omit “of a devolution issue”.

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- (10) In sections 112(6), 121(5)(a), 121A(5), 122(4) and (5) and 177(8), after “under” insert “ section 288AA of this Act or ”.
- (11) In section 124(2)—
- (a) after “Part XA” insert “ and sections 288ZB and 288AA ”;
  - (b) after “purposes of” insert “ a reference under section 288ZB or ”;
  - (c) after “appeal under” insert “ section 288AA of this Act or ”.

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**Commencement Information**

**II** S. 36 in force at 22.4.2013 by S.I. 2013/6, art. 2(c)

**Changes to legislation:**

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