EXPLANATORY MEMORANDUM TO

THE SCOTLAND ACT 2012 (CONSEQUENTIAL PROVISIONS) ORDER 2013

2013 No.

1. 1.1 This explanatory memorandum has been prepared by the Office of the Advocate General and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of this instrument is to make a number of consequential amendments to enactments in consequence of the coming into force of sections 34 to 36 of the Scotland Act 2012 ("the 2012 Act").

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 This instrument is being brought forward in order to amend the Legal Aid (Scotland) Act 1986 and the Criminal Justice and Licensing (Scotland) Act 2010 in consequence of the coming into force of sections 34 to 36 of the 2012 Act, which create a new system of "compatibility issues".

4.2 The Legal Aid (Scotland) Act 1986 is amended so that criminal legal aid is available in relation to compatibility issues.

4.3 The definition of "appellate proceedings" in the Criminal Justice and Licensing (Scotland) Act 2010 is amended to include compatibility issues.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Secretary of State for Scotland has made the following statement regarding Human Rights:

> *"In my view the provisions of the Scotland Act 2012 (Consequential Provisions) Order 2013 are compatible with the Convention rights."*

7. Policy background

7.1 Following the coming into force of the Scotland Act 1998 ("the 1998 Act"), the UK Supreme Court and its predecessors were given a role in determining "devolution issues" arising in court proceedings. Devolution issues under the 1998 Act included questions of whether an Act of the Scottish Parliament is within its legislative competence, and whether the proposed or purported exercise of a function by the Scottish Ministers would be incompatible with any of the rights under the European Convention on Human Rights ("ECHR") or with EU law.

7.2 The 2012 Act makes substantial amendments to this aspect of the 1998 Act and creates a new scheme of appeals in relation to "compatibility issues". These are questions arising in criminal proceedings in Scotland about compatibility with the ECHR or with EU law. These issues would currently be dealt with as devolution issues, but will be treated as compatibility issues under the 2012 Act regime.

7.3 The creation of a right of appeal in relation to compatibility issues has resulted in consequential amendments being needed to other criminal procedure legislation.

8. Consultation outcome

8.1 No consultation was undertaken on this instrument.

9. Guidance

9.1 No guidance is being prepared in respect of this instrument.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is nil.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 Section 38 of the Scotland Act 2012 requires the Secretary of State to review the provision made by sections 34 to 37 of the 2012 Act as soon as practicable after the end

of 3 years beginning with the day on which section 36(6) comes into force (or earlier if the Secretary of State considers this to be appropriate). In other words, a review is required to take place as soon as practicable after 22nd April 2016. Section 38(3) of the 2012 Act sets out what the review must consider, and this includes whether any changes are required to the provision made by sections 34 to 37 of the 2012 Act.

13. Contact

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can answer any queries regarding the instrument.