

# CONVENTION RIGHTS (COMPLIANCE) (SCOTLAND) ACT 2001

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## EXPLANATORY NOTES

### THE ACT

#### Part 3

#### Legal Aid

#### Employment of solicitors by the Board: further provisions

73. [Section 9](#) of the Act makes amendments to sections 4, 11, 12, 25A, 25B, 26, 28A and 31 of the 1986 Act to enable the Board to use its powers under section 26 of that Act to directly employ solicitors for the purpose of providing criminal legal assistance.
74. [Sections 9\(1\)](#) and [\(2\)](#) amend sections 4 and 11 of the 1986 Act which deal with the provision of advice and assistance and any associated contributions to ensure that any client represented by a directly employed solicitor is treated in the same way as a client represented by a private solicitor under legal aid, in relation to expenses and payment of contributions respectively.
75. [Section 9\(3\)](#) amends section 12 of the 1986 Act. This is to ensure that the salary of a directly employed solicitor is not subject to the regulations that apply to the payment of legal aid fees and expenses to a private solicitor providing advice and assistance under Part II of the 1986 Act.
76. [Sections 9\(4\)](#) and [\(5\)](#) amend sections 25A and 25B of the 1986 Act respectively. The amendments have the effect of ensuring that any solicitor employed by the Board under section 26 of the 1986 Act for the purpose of providing criminal legal assistance is required to be registered under section 25A of the 1986 Act and allow the Board to set different provisions in a Code of Practice under section 25B for such directly employed solicitors.
77. [Section 9\(6\)](#) amends section 26(1)(a) of the 1986 Act by inserting a new regulation making power. This power will allow the Scottish Ministers to prescribe the cases in which the Board may employ solicitors for the purposes of providing advice and assistance under Part II of the 1986 Act. Such regulations will be subject to negative resolution procedure.
78. [Section 9\(7\)](#) amends section 28A of the 1986 Act. The effect is to ensure that the provisions of section 28A have no effect on the power to commence sections 26 to 28 of the 1986 Act. The amendments also have the effect of ensuring that provisions that would by virtue of section 28A(12) cease to have effect would remain in force in relation to solicitors employed under sections 26 to 28 of the 1986 Act.
79. [Section 9\(8\)](#) amends section 31(1A) of the 1986 Act. The effect is that the entitlement of a person to select a solicitor or counsel under section 31(1) of the 1986 Act does

*These notes relate to the Convention Rights (Compliance) (Scotland)  
Act 2001 (asp 7) which received Royal Assent on 5 July 2001*

not apply where that person is provided with criminal legal assistance by a solicitor employed by the Board under sections 26 and 27 of the 1986 Act.