

MANAGEMENT OF OFFENDERS ETC. (SCOTLAND) ACT 2005

EXPLANATORY NOTES

INTRODUCTION

Integrated Management Of Offenders

Section 8 – Transfer of functions to community justice authority

63. This section provides that community justice authorities may be given the power to deliver criminal justice social work services (under sections 27(1), 27(1A), 27ZA or 27B of the [Social Work \(Scotland\) Act 1968 \(c.49\)](#)).
64. Those functions of the Scottish Ministers, exercised through the Scottish Prison Service, relating to the preparation of offenders for release can also be transferred to a community justice authority. These are functions under the Prisons (Scotland) Act 1989. The effect is that certain functions, such as prison based social work, could in future be transferred to a community justice.
65. Subsection (2) enables Scottish Ministers to transfer, by Order, responsibility for the exercise of functions referred to in subsection (1) from all local authorities in a community justice authority area, or from Scottish Ministers themselves to the relevant community justice authority. This is however subject to different arrangements regarding Islands authorities specified in subsection (7) and described in paragraph 69 below.
66. Subsection (3) also provides for the community justice authority and a number of local authorities, but not necessarily all, within a community justice area to agree that a function may be exercised by a community justice authority on behalf of the local authorities. Subsection (3) imposes a statutory duty on community justice authorities to consult with those not party to a joint determination that functions should be exercised by a community justice authority on behalf of local authorities.
67. Subsection (4) allows Scottish Ministers and a community justice authority to jointly agree that functions of Scottish Ministers under the [Prisons \(Scotland\) Act 1989 \(c.45\)](#) which pertain to the preparation of offenders for release from imprisonment or detention in custody, are to be exercised by the community justice authority on behalf of Scottish Ministers.
68. Subsections (6) and (7) regulate the Ministerial power to lay an order for the statutory transfer of a function from local authorities to a community justice authority under subsection (2). Specifically under subsection (6), such an order may not be laid unless Scottish Ministers have consulted with and obtained the agreement of the community justice authority and local authorities whose areas lie within the area of that community justice authority, subject to subsection (7). Similarly, an order transferring a function from Scottish Ministers to the community justice authority cannot be laid without the agreement of the community justice authority to undertake that function.

*These notes relate to the Management of Offenders etc. (Scotland)
Act 2005 (asp 14) which received Royal Assent on 8 December 2005*

69. Subsection (7) provides a means by which a function proposed to be transferred by order to the relevant community justice authority, shall remain exercisable by any of the Island local authorities if they choose to retain the function. In such cases, the order would be redrafted to reflect this. Subsection (7)(b) enables Scottish Ministers, where any Island authority has opted out of function transfer, to lay an order transferring a function from the remaining local authorities within a community justice authority area without requiring the consent of that island authority.