

COMMUNITY JUSTICE (SCOTLAND) ACT 2016

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the and to help inform debate on it. They do not form part of the Act and have not been endorsed by the Parliament.
2. The Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE ACT

3. At present, certain services relating to what is known as “community justice” are delivered through eight regional Community Justice Authorities (CJAs) established under the Management of Offenders etc. (Scotland) Act 2005. The role of CJAs is to plan, co-ordinate, monitor and report on the delivery of offender services and to produce a strategic plan for their area in consultation with statutory and non-statutory partner bodies. The membership of CJAs is restricted to elected members from each constituent local authority. However, reports published in 2012 by the Commission on Women Offenders and by Audit Scotland highlighted concerns with the current model for community justice. Two consultations undertaken by Scottish Government in 2012 and 2014 identified support for a new model.
4. The Act establishes a new model for community justice services which has local delivery, partnerships and collaboration at its heart, with national arrangements to provide profile, leadership and strategic direction. Robust accountability and driving improvement will also be important aspects of the new model. Enhanced opportunities for innovation, learning and development will also be provided.
5. The Act consists of 42 sections and 2 schedules. In summary, they make provision as follows:
 - Section 1 defines community justice for the purposes of the Act.
 - Section 2 gives meanings for certain terms used in section 1.
 - Sections 3 to 12 and schedule 1 establish Community Justice Scotland as an Executive Non-Departmental Public Body and set out its key functions.
 - Section 13 identifies community justice partners.
 - Section 14 defines third sector bodies involved in community justice for the purposes of this Act.
 - Sections 15 to 18 provide for the development and review of a national strategy for community justice; and for the development and review of a national performance framework.

*These notes relate to the Community Justice (Scotland) Act 2016 (asp 10)
which received Royal Assent on 21 March 2016*

- Sections 19 to 23 set out how the community justice partners in relation to each local authority area are to prepare and report on an outcomes improvement plan for community justice.
- Section 24 requires community justice partners, when fulfilling their functions under sections 19 to 23, to have regard to any guidance issued by the Scottish Ministers.
- Section 25 confers a duty on a community justice partner to have regard to the community justice outcomes improvement plan for the area of a local authority when exercising their existing functions.
- Sections 26 to 30 require Community Justice Scotland to monitor performance in the area of each local authority against the national performance framework and to provide periodic reports on performance to local community justice partners. Community Justice Scotland is empowered to make recommendations to local community justice partners and the Scottish Ministers on any action it considers necessary in relation to the achievement of outcomes or improvement of performance. Community Justice Scotland must also produce an annual report in relation to performance across Scotland in achieving the outcomes.
- Section 31 makes provision for Community Justice Scotland's involvement in the development and arranging of community justice services.
- Sections 32 to 34 make provision for Community Justice Scotland's functions with regard to innovation, learning and development.
- Section 35 requires Community Justice Scotland and community justice partners to co-operate with each other.
- Section 36 abolishes community justice authorities.
- Section 37 is an interpretation provision.
- Sections 38 to 41 are supplementary, dealing with matters such as commencement and the making of ancillary provision.
- Schedule 2 amends various pieces of existing legislation in consequence of the Act's provisions.

COMMENTARY ON SECTIONS

Section 1: Meaning of community justice

6. **Section 1** provides a definition of "community justice" for the purposes of the Act. It provides that community justice is concerned with the following activities:
 - Giving effect to bail conditions, community disposals and post-release control requirements,
 - Managing and supporting persons falling within subsection (3), (6) or (7) with a view to them not offending in future or, if that is not realistic, reducing future offending by them,
 - Arranging general services in ways which facilitate persons falling within subsection (3), (6) or (7) accessing and using them,
 - Preparing persons who have been convicted of offences and sentenced to imprisonment or detention in penal institutions for release and facilitating the provision of relevant general services as they are likely to need immediately following their release.

7. **Section 1(2)** clarifies what is meant by “supporting” and then goes on to set out the persons that fall within the definition of community justice, particularly subsections (3), (6) and (7). The persons that fall within subsection (3) are persons who have, anywhere in the world, been convicted of an offence, made the subject of a relevant finding (defined in section 2(2)(b)), given an alternative to prosecution or arrested on suspicion of having committed an offence. Persons who are the subject of a recognised EU supervision measure fall within subsection (6). Persons who are 16 or 17 years old and subject to a compulsory supervision order made by virtue of the ground in section 67(2)(j) of the Children’s Hearing (Scotland) Act 2011 (having committed an offence) fall within subsection (7).

Section 2: Interpretation of section 1

8. **Section 2** defines certain words and phrases mentioned in section 1. These are mainly self-explanatory, but it may be helpful to know that a “recognised EU supervision measure” is effectively a pre-trial bail order made elsewhere in the European Union.

Section 3: Establishment

9. This section establishes Community Justice Scotland as a body corporate with a separate legal personality to that of Scottish Ministers. Community Justice Scotland’s Gaelic name (Ceartas Coimhearsnachd Alba) has equal legal status. Community Justice Scotland will be an Executive Non-Departmental Public Body which means that it will carry out its functions at arm’s length from Scottish Ministers. However, it will be accountable to Ministers. Section 3 introduces schedule 1 which contains further provision about the establishment and operation of Community Justice Scotland.

Section 4: Functions

10. **Section 4** sets out the main functions of Community Justice Scotland. These functions are:
- promoting the national strategy in relation to community justice established by later provisions of the Act;
 - monitoring, promoting and supporting improvement in, and keeping the Scottish Ministers informed of, performance in relation to the provision of community justice (particularly performance in relation to the achievement of the nationally determined outcomes established by later provisions of the Act);
 - promoting and supporting improvement in the quality and range of community justice (particularly improvement in meeting the needs of persons mentioned in subsection (2)) and the effective use of the facilities, people and other resources available for community justice; and
 - promoting public awareness of benefits arising from persons who are convicted of offences being sentenced to community disposals rather than imprisonment or detention in penal institutions and from managing and supporting persons falling within section 1(3), (6) or (7) with a view to them not offending in the future or, if that is not realistic, reducing future offending by them.
11. Community Justice Scotland also has any other functions conferred by the Act (such as those in section 32 in relation to the learning and development strategy) or any other enactment. Section 4(5) makes provision for the Scottish Ministers to confer additional functions on, or transfer another person’s functions to, Community Justice Scotland; or make changes to the body’s functions in relation to community justice; or remove or transfer functions which have been conferred on or transferred to the body under regulations previously. This power to alter Community Justice Scotland’s functions can only be exercised by regulations made by the Scottish Ministers, and such regulations will be subject to affirmative procedure. Regulations are a form of

statutory instrument (also known as “secondary legislation”). “Affirmative procedure” means that the regulations cannot be made until a draft of them has been laid before and approved by the Scottish Parliament.

12. The Scottish Ministers may decide in future that it is necessary or desirable for Community Justice Scotland to acquire further functions or for existing functions to be modified in response to any changes in the policy or practice of planning, delivering and monitoring of community justice services. The power in section 4(5) therefore allows the flexibility to respond to developments as the nature and practice of planning for community justice evolve and the provisions in the Act take effect. Section 4(6) provides a power to modify primary legislation should it be appropriate in relation to the functions concerned. For example, the best place to include a new function might be in the Act itself. Before making regulations, Scottish Ministers must consult Community Justice Scotland; each of the other community justice partners; and anyone else they consider appropriate.

Section 5: General powers

13. This section gives Community Justice Scotland a general power to do anything deemed necessary or expedient in order to carry out its functions, or anything conducive to the exercise of its functions. This could include publicity, or asset management, for example.

Section 6: Provision of information, advice or assistance

14. This section requires community justice partners (other than the Scottish Ministers) to provide information, advice or assistance to Community Justice Scotland if it requests these to help carry out its functions.

Section 7: Funding

15. [Section 7](#) allows the Scottish Ministers to make grants to Community Justice Scotland to allow it to carry out its functions, or for any purpose specified by them in connection with its functions, subject to any conditions the Scottish Ministers may determine, such as repayment. This could include funding to commission national research or for the development of national offender programmes like the “Caledonian System”, which is an existing programme aimed at addressing domestic violence.

Section 8: Directions and guidance

16. [Section 8](#) requires Community Justice Scotland to have regard to guidance issued by Scottish Ministers and to comply with any direction issued by the Scottish Ministers about the carrying out of its functions. The Scottish Ministers may also vary or revoke a direction or guidance. Any document issued or varied under this section must be laid by the Scottish Ministers before the Scottish Parliament and published.

Section 9: Governance and accountability

17. [Section 9](#) provides that that Community Justice Scotland must operate in a way which is proportionate, transparent, accountable and consistent with the principles of good governance which appears to it to constitute best practice.

Section 10: Corporate plan

18. [Section 10](#) sets out the arrangements to be observed by Community Justice Scotland when preparing its corporate plan. Once established, Community Justice Scotland must prepare a plan setting out how it intends to exercise its functions as soon as is reasonably practicable. When preparing the plan, Community Justice Scotland must have regard to the national strategy and must consult each of the community justice partners; such third sector bodies involved in community justice (as defined in section 14(1)) as it considers

appropriate; and such other persons it considers appropriate. The plan must be submitted to the Scottish Ministers as soon as practicable after Community Justice Scotland is established. The Scottish Ministers may approve the plan with modifications, if they consider this appropriate. Should the Scottish Ministers wish to modify the plan, they must first consult Community Justice Scotland. Following approval, the Scottish Ministers must lay a copy of the plan before the Scottish Parliament. Thereafter, Community Justice Scotland must publish the plan as soon as is reasonably practicable.

19. Community Justice Scotland must review the corporate plan as soon as reasonably practicable following publication of a revised national strategy. Otherwise, Community Justice Scotland may review it at any time. Should Community Justice Scotland decide to revise the plan following a review, the revised plan must follow the same processes for preparation, submission, approval and review as set out in the paragraph above.

Section 11: Annual reports on exercise of functions

20. **Section 11** requires Community Justice Scotland to prepare and publish an annual report as soon as reasonably practicable after the end of each financial year. The report must provide information on the exercise of Community Justice Scotland's functions. In preparing the report, Community Justice Scotland must engage with each of the community justice partners; such third sector bodies involved in community justice as it considers appropriate; and, anyone else it considers appropriate – which could, for example, include wider stakeholders and delivery partners. Community Justice Scotland must send a copy of the report to the Scottish Ministers who must lay it before the Scottish Parliament. Once the report is laid before the Scottish Parliament, Community Justice Scotland must publish it.

Section 12: Accounts

21. **Section 12** requires Community Justice Scotland to keep proper accounts and to prepare and send to the Scottish Ministers a statement of accounts as soon as reasonably practicable after the end of each financial year. The Scottish Ministers may direct the form, content and method of preparation of the statement. The Scottish Ministers must send a copy of each statement of accounts to the Auditor General for Scotland for auditing.

Section 13: Community justice partners

22. **Section 13(1)** defines “community justice partners” for the purposes of the Act. This is a list of persons who are considered to have functions in relation to community justice. The Scottish Ministers are included as a community justice partner with the expectation that the Scottish Prison Service will represent Ministers in carrying out certain functions under the Act.
23. The Act contains a number of functions which are to be exercised in respect of the separate local authority areas of Scotland. Those functions are to be exercised by those of the list of community justice partners who are relevant to the area, acting jointly. Subsection (2) identifies the group of partners who are to have these functions in relation to a local authority area.
24. Subsection (3) enables the Scottish Ministers to make regulations which add to, remove from, or amend, this list of partners. Any such regulations are subject to affirmative procedure.

Section 14: Third sector bodies involved in community justice

25. **Section 14(1)** defines what is meant by references in the Act to a third sector body which is involved in community justice. It means a third sector body which provides a service in relation to community justice or which represents or promotes the interests of persons referred to in subsection (4) or of other persons who are or may be affected

by community justice in subsection (5). The persons referred to in subsection (4) are those persons who fall within section 1(3), (6) or (7), or persons who are being prepared for release from imprisonment or detention in a penal institution. The persons referred to in subsection (5) include the families of those persons and victims and families of victims. The term “third sector body” is defined in section 37.

Section 15: National strategy in relation to community justice

26. **Section 15** requires the Scottish Ministers to publish a national strategy for community justice within a year of the section coming into force. The purpose of the strategy is to provide the strategic vision for community justice in Scotland. The strategy may contain such material in relation to community justice as the Scottish Ministers consider appropriate, such as details of the aims of community justice or the actions proposed to achieve these aims; action that Ministers propose to take or consider others should take; and action Ministers consider others should take to facilitate access to general services (as defined in section 2) for persons released from imprisonment or detention. In preparing the strategy the Scottish Ministers must consult each of the community justice partners; such third sector bodies involved in community justice and such other persons as they consider appropriate. The requirement to consult may be complied with by consultative activity which takes place before section 15 comes into force. As soon as reasonably practicable after the strategy has been published, Scottish Ministers must lay a copy before the Scottish Parliament.

Section 16: Review of national strategy

27. **Section 16** requires the Scottish Ministers to review the national strategy for community justice within 5 years of the publication of the first strategy. Thereafter, they may review the strategy at such time as they see fit but at the latest within five years of the last review. When reviewing or revising the strategy the Scottish Ministers must consult Community Justice Scotland, each of the other community justice planning partners, such third sector bodies involved in community justice and such other persons they consider appropriate. The Scottish Ministers must then either publish a revised strategy or, publish a statement indicating that they consider that the strategy should not be revised. After a revised strategy has been published, the Scottish Ministers must lay a copy before the Scottish Parliament as soon as reasonably practicable. Once published, the revised strategy becomes subject to this section as though it were the original strategy.

Section 17: National performance framework in relation to community justice

28. **Section 17** requires the Scottish Ministers to publish a national performance framework no later than one year after this section comes into force. The framework will include a set of “nationally determined” outcomes and indicators, and will be used by community justice partners to plan services, measure progress, identify where resources may be best applied, assess good practice and report on achievements, as well as identify issues and blockages. The framework therefore will set out the outcomes required, together with tools to support the improvement in community justice to achieve the vision presented in the national strategy. The framework may also contain such other information as the Scottish Ministers consider appropriate, including indicators in relation to access to and use of relevant general services (as defined in section 2), which will be used to measure performance. The framework may also contain advice or guidance as appropriate. In preparing the framework, the Scottish Ministers must consult the other community justice partners; such third sector bodies involved in community justice as they consider appropriate; and anyone else that Scottish Ministers consider appropriate.

Section 18: Review of national performance framework

29. **Section 18** requires Community Justice Scotland to review the national performance framework within 5 years of the publication of the original framework. Thereafter,

they may review the framework when they see fit but at the latest, within five years of the last review. When reviewing the framework, Community Justice Scotland must take account of the national strategy in place at that time; and must consult community justice partners (other than Scottish Ministers); such third sector bodies involved in community justice as it considers appropriate; and any other appropriate persons. Community Justice Scotland may, following a review, propose changes to the framework to Scottish Ministers or publish a statement indicating that they consider no revision to be required. Scottish Ministers may amend or reject any such proposals, but must consult Community Justice Scotland before doing so. Should Scottish Ministers accept the proposed changes, then they must as soon as practicable revise and publish the revised framework. Should the Scottish Ministers reject a proposal to revise the framework, then they must publish a statement to that effect. Once published, the revised framework becomes subject to this section as though it was the original framework.

Section 19: Community justice outcomes improvement plan

30. **Section 19** requires community justice partners to publish a community justice outcomes improvement plan for the area of a local authority in accordance with a timescale set by the Scottish Ministers in regulations. Regulations establishing a timescale for production of the plan will be subject to the negative procedure. “Negative procedure” means that the regulations may be annulled by the Scottish Parliament after they have been made (in which case, they have no further legal effect). The plan must set out the community justice partners’ assessment of the extent to which each nationally determined outcome has been achieved in the area, or how close an outcome is to being achieved. Thereafter, the plan should specify whether each outcome should be a priority in light of that assessment. Finally, the plan should detail what action the partners will take, either jointly or individually, to achieve, or maintain the achievement of, each outcome. In assessing the extent to which each outcome has been achieved, partners must use the national indicators.
31. The plan may also include other material in relation to community justice which the partners consider appropriate, and additional outcomes (“locally determined outcomes”) which they consider should be prioritised in their area. Community justice partners must also set out which indicators they will use to measure performance in achieving these outcomes, and the action they will take to achieve or maintain the achievement of them.
32. As soon as reasonably practicable after publishing the community justice outcomes improvement plan, the community justice partners must send a copy to Community Justice Scotland.

Section 20: Preparation of community justice outcomes improvement plan

33. Local planning in partnership in communities across Scotland is a key part of the community justice model which the Act takes forward and the community justice outcomes improvement plan will be the primary document planning partners will use to set out their progress towards achieving outcomes together with the action they intend to take to further achieve outcomes over the next reporting period. In preparing the community justice outcomes improvement plan, the community justice partners must have regard to the national strategy, the national performance framework, and the local outcomes improvement plan for their area prepared under section 6(1) of the Community Empowerment (Scotland) Act 2015. Community justice partners must also consult Community Justice Scotland, third sector bodies involved in community justice in relation to the area, relevant community bodies and any other person they consider appropriate. They must also make reasonable efforts to determine which third sector bodies and community bodies are likely to be able to contribute to the preparation of the plan, and make reasonable efforts to secure and facilitate their participation.

Section 21: Community justice outcomes improvement plan: participation statement

34. **Section 21(1)** requires the community justice partners to prepare a statement setting out the action that they took to determine, secure and facilitate the participation of third sector bodies involved in community justice in relation to the area and relevant community bodies. The participation statement must also set out which third sector or community bodies participated.
35. Subsection (2) provides that the participation statement may be incorporated into the community justice outcomes improvement plan published under section 19(1). If the participation statement is not incorporated into the plan, the community justice partners must publish the statement and send a copy to Community Justice Scotland.

Section 22: Review of community justice outcomes improvement plan

36. **Section 22** requires community justice partners to review their community justice outcomes improvement plan after the publication of: a revised national strategy for community justice; a revised national performance framework; or the publication of a revised local outcomes improvement plan in relation to the area under section 7(5) of the Community Empowerment (Scotland) Act 2015. Community justice partners may otherwise revise community justice outcomes improvement plans from time to time. After the community justice outcomes improvement plan has been reviewed, the partners may decide to publish a revised version. If a revised plan is not to be published following a review, partners must publish a statement to that effect.
37. When reviewing or revising the community justice outcomes improvement plan the partners must have regard to the national strategy, the national performance framework, and the local outcomes improvement plan. They must also make reasonable efforts to secure the participation of third sector bodies involved in community justice in relation to the area and community bodies that are likely to be able to contribute to the review or revision of the plan, and make reasonable efforts to secure the participation of such bodies in such revision or review. They must take reasonable steps to enable such a body which wishes to take part in the review process to do so. The requirement in section 22 to prepare and publish a participation statement applies to a revised plan as it did to the previous plan.
38. As soon as reasonably practicable after publishing a revised community justice outcomes improvement plan, the community justice partners must send a copy to Community Justice Scotland. After a revised plan is published, the above steps in relation to revision, review and publication apply to it as they did to the previous plan.

Section 23: Reports on performance in relation to community justice outcomes

39. **Section 23** requires community justice partners to publish a report setting out their assessment on whether the nationally determined outcomes and any locally determined outcomes were achieved in their area during the period of the report. The report must set out the action taken by the community justice partners in the period of the report to achieve the outcome and their assessment of whether each outcome was being met. Where an outcome is not being achieved, the report must set out the progress towards its achievement. In making their assessment, the community justice partners must use the relevant indicators set out in their community justice outcomes improvement plans. Subsection (6) sets out what is meant by “relevant indicators”.
40. When preparing the reports, the community justice partners must consult each third sector body involved in community justice in relation to the area; such community bodies in relation to the area as they consider appropriate; and such other parties as they consider appropriate. This report must be published as soon as reasonably practicable after the end of each reporting period and a copy sent to Community Justice Scotland.

41. The timing of the first reporting period will be set by the Scottish Ministers by regulations which are subject to the negative procedure. Thereafter, the end of subsequent reporting periods will fall on the anniversary of the end of the first reporting period.

Section 24: Guidance in relation to community justice outcomes improvement planning

42. **Section 24** requires community justice partners to have regard to any guidance issued by the Scottish Ministers about the exercise of the functions relating to outcomes improvement planning and reporting. Before issuing such guidance, the Scottish Ministers must consult each other person to whom it relates and anyone else they consider appropriate. Guidance issued under this section must be published.

Section 25: Duty to have regard to community justice outcomes improvement plan

43. **Section 25** requires community justice partners to have regard to the community justice outcomes improvement plans for the area of a particular local authority when exercising their functions in relation to community justice in the relevant area.

Section 26: Monitoring of performance in relation to community justice outcomes

44. **Section 26** requires Community Justice Scotland to monitor performance in the achievement of outcomes in each local authority area, using the relevant indicators. Community Justice Scotland must also from time to time report to the community justice partners for the area of each local authority on its assessment of their performance. Community Justice Scotland may direct community justice partners to publish the report, or information within it. Community justice partners must also, within a specified timescale, comply with a direction to inform Community Justice Scotland of the actions the partners have taken or plan to take, in order to respond to the report. Where they do not intend to take action in response to the report, they must notify Community Justice Scotland of that fact.

Section 27: Annual report on performance in relation to community justice outcomes

45. **Section 4(1)(b)** of the Act requires Community Justice Scotland to keep the Scottish Ministers informed of performance in the provision of community justice, particularly the achievement of nationally determined outcomes. In this regard, section 27 requires Community Justice Scotland to publish a report, as soon as reasonably practicable after 31 March in each year, setting out its assessment of performance in Scotland as a whole in relation to the achievement of the national outcomes. In assessing performance for the purpose of the report, Community Justice Scotland must use the national indicators. When preparing the report, Community Justice Scotland must consult the community justice partners; such third sector bodies involved in community justice as it considers appropriate; and any other persons it considers appropriate. Community Justice Scotland must lay a copy of the report before the Parliament as soon as reasonably practicable after the report has been published.

Section 28: Performance improvement activity

46. This section provides that Community Justice Scotland, in exercise of its general powers and to fulfil its function in section 4(1)(b), may identify, establish or promote good practice in relation to community justice outcomes improvement planning and reporting generally, and in relation to the provision of community justice; it may provide advice, guidance or assistance to the community justice partners in relation to planning and reporting and in relation to the provision of community justice; and it may make local or national improvement recommendations (as elaborated on in sections 29 and 30).

Section 29: Local improvement recommendations

47. This section provides the detail of the recommendations that Community Justice Scotland may make to the community justice partners on actions which it considers are necessary in order to achieve a nationally or locally determined outcome, or which would improve performance in achieving such outcomes, or any other aspect of community justice. These recommendations may be made to the community justice partners of a particular local authority area. The community justice partners must comply with any direction issued by Community Justice Scotland to publish the recommendation or specified information in the recommendation. They must also comply with any direction to notify Community Justice Scotland, within such period as may be specified in the direction, of the action that they have taken or propose to take or of their intention not to take any action in response to the recommendation.

Section 30: National improvement recommendations

48. This section provides the detail of the recommendations that Community Justice Scotland may make to the Scottish Ministers on actions which it considers are necessary in order to achieve a nationally determined outcome, or which would improve performance in achieving such outcomes, or any other aspect of community justice. These recommendations apply to Scotland as a whole or in the area of a particular local authority. Recommendations must be published by Community Justice Scotland as soon as reasonably practicable after they have been made.

Section 31: Ability of Community Justice Scotland to develop and arrange services

49. This section provides that, in exercise of its general powers, Community Justice Scotland is able to carry out a number of activities related to the provision of community justice services (either alone or in partnership with others), while making clear that Community Justice Scotland itself is not a provider of such services.
50. Community Justice Scotland may identify the need for a service; design a suitable model for delivering the service; and make arrangements for the provision of the service (for example, identifying suitable suppliers or undertaking procurement). It may take these actions on its own or encourage or assist or collaborate with community justice partners to take such action. The services referred to may be developed or arranged for delivery at national or local level. Before carrying out these activities, Community Justice Scotland must consider the suitability of those services for the local area and whether it would be appropriate to collaborate with others. Community Justice Scotland must also consult the community justice partners; such third sector bodies involved in community justice as it considers appropriate; and anyone else it considers appropriate.
51. The section also requires Community Justice Scotland to comply with any request from the Scottish Ministers in relation to the arrangement or development of community justice services. Before making such a request, the Scottish Ministers must consult the community justice partners; such third sector bodies involved in community justice as it considers appropriate; and anyone else they consider appropriate.

Section 32: Strategy for innovation, learning and development

52. No later than one year after this section comes into force, Community Justice Scotland must publish a strategy for innovation, learning and development. The content of the strategy is for Community Justice Scotland to determine but it may include such material about innovation, learning and development in relation to community justice as Community Justice Scotland considers appropriate. In preparing the strategy, Community Justice Scotland must have regard to the national strategy for community justice and the national performance framework. Community Justice Scotland must also consult each community justice partner; such third sector bodies involved in community justice as it considers appropriate; and anyone else it considers appropriate when preparing the strategy.

Section 33: Review of strategy for innovation, learning and development

53. Community Justice Scotland must review the strategy for innovation, learning and development within 5 years of the publication of the first strategy. Thereafter, it may review the strategy at such time as it sees fit but, at the latest, within five years of the last review. If, after a review of the strategy, Community Justice Scotland decides to revise it, the revised strategy must be published. If no revision is made, Community Justice Scotland must publish a statement to this effect. When reviewing or revising the strategy Community Justice Scotland must have regard to the national strategy for community justice and the national performance framework and must consult each community justice partner; such third sector bodies involved in community justice as it considers appropriate; and anyone else it considers appropriate. If a revised strategy is published, this section applies to it as though it were the original strategy.

Section 34: Innovation, learning and development activity

54. Section 34 sets out a range of actions that Community Justice Scotland may take in connection with the strategy for innovation, learning and development. The actions include conducting or commissioning research; identifying, establishing or promoting good practice; and developing or providing education or training and related materials. Community Justice Scotland may also require, encourage or assist community justice partners or other persons to carry out these actions. A community justice partner must comply with a requirement made by Community Justice Scotland in relation to this. Community Justice Scotland must also comply with a request from the Scottish Ministers that it conducts or commissions particular research, establishes or promotes particular good practice, or develops or provides particular education or training. Community Justice Scotland may charge for any education or training it develops or for materials to be used for education or training which it develops or provides.

Section 35: Duty of co-operation

55. Section 35 requires Community Justice Scotland, each community justice partner and the community justice partners for each local authority to co-operate with each other in carrying out their respective functions in the context of community justice. Co-operation may include information-sharing; providing advice and assistance; co-ordinating activities; and jointly funding activities. Community Justice Scotland and the community justice partners must, in co-operating with each other under section 35, have regard to what is best suited to, or most appropriate for, the local area.

Section 36: Abolition of community justice authorities

56. Section 36 abolishes community justice authorities and revokes the order (S.S.I. 2006/182) which established them; and repeals sections 3 to 9 of the Management of Offenders etc. (Scotland) Act 2005 which contains the relevant law which regulates their existence and functions.

Section 37: Interpretation

57. Section 37 defines certain expressions used in the Act.

Section 38: Consequential and minor modifications

58. Section 38 introduces schedule 2 to the Act, which modifies other pieces of legislation in consequence of its provisions.

Section 39: Regulations

59. Section 39 provides that powers under the Act to make regulations may make different provision for different purposes; and may include supplementary, incidental, consequential, transitional, transitory or saving provision.

Section 40: Ancillary provision

60. This section allows the Scottish Ministers to make ancillary provision by regulations. Generally, such regulations are subject to negative procedure but any regulations which add to, replace or omit any part of the text of an Act are subject to the affirmative procedure.

Section 41: Commencement

61. This section provides for the commencement of the Act. While most of the Act will come into force on a day specified by the Scottish Ministers by regulations, there are certain sections which came into force on the day after Royal Assent. These sections are 1, 2, 13(1), 14(1) to (6), 15, 17, 37, 39, 40 and 42. Supporting provisions – that is, provisions on interpretation, regulations, ancillary provisions, short title and the like - are routinely brought into force on that day. However, the other sections mentioned came into force on the day after Royal Assent in order that the national strategy, performance framework and guidance could be in place to align with the planned arrangements for the preparation of the first round of community justice outcomes improvement plans.

Schedule 1

62. This schedule is introduced by section 3 and makes further provisions on the membership, procedures and staffing of Community Justice Scotland.

Paragraph 3: Membership

63. [Paragraph 3](#) sets out a number of provisions for the membership of Community Justice Scotland. In particular, a member is to be appointed by the Scottish Ministers to the role of chair. There are to be at least five and no more than eight additional members and they will also be appointed by the Scottish Ministers. A list is provided of those public office holders who may not be appointed as a member. The Scottish Ministers may vary the maximum and minimum number of members by regulations subject to the negative procedure. This paragraph also provides for the members to elect one of their number to deputise for the chair in appropriate circumstances.

Paragraph 4: Tenure etc.

64. [Paragraph 4](#) sets out provisions relating to the tenure of appointments. In particular, the Scottish Ministers determine the period of appointment for members of Community Justice Scotland and may re-appoint those who already have been members. The total period of appointment must not exceed eight years.

Paragraph 6: Power to end membership

65. [Paragraph 6](#) confirms that the Scottish Ministers may remove a member who becomes an undischarged bankrupt. The Scottish Ministers may also remove a member where they are satisfied that the member has failed to attend three consecutive meetings of Community Justice Scotland; or where the member is unable to perform the functions required; or where the member is unsuitable to continue being a member.

Paragraph 7: Remuneration and allowances of members

66. [Paragraph 7](#) makes provision for Community Justice to pay its members remuneration and allowances, as determined by the Scottish Ministers.

Paragraph 8: Chief executive and other staff

67. [Paragraph 8](#) requires Community Justice Scotland to employ a chief executive. The Scottish Ministers will appoint the first chief executive of Community Justice Scotland.

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Each subsequent chief executive will be appointed by Community Justice Scotland, with approval of Scottish Ministers, on such terms and conditions as it may determine. Community Justice Scotland may also appoint other members of staff on such terms and conditions as Community Justice Scotland, with approval of the Scottish Ministers, determines.

Paragraph 9: Pensions, allowances and gratuities

68. Paragraph 9 provides for Community Justice Scotland, with the approval of the Scottish Ministers, to make arrangements in relation to pensions, allowances and gratuities for its existing and past staff.

Paragraph 10: Procedure

69. Paragraph 10 provides that Community Justice Scotland may regulate its own procedures.

Paragraph 11: Committees

70. Paragraph 11 makes provision for Community Justice Scotland to establish and operate committees and sub-committees for any purpose relating to its functions. This paragraph also provides that committees may be partially composed of non-members of Community Justice Scotland, but that such committee members may not vote at meetings.

Paragraph 12: Validity of things done

71. Paragraph 12 makes clear that the validity of proceedings of Community Justice Scotland will be unaffected by any membership vacancies, a defect in the process of appointing members, or the ending of a person's membership under paragraph 5 of schedule 1.

Paragraph 13: Authority to exercise functions

72. Paragraph 13 provides that Community Justice Scotland may authorise a member, a committee, the chief executive or any other member of staff to exercise its functions.

Paragraph 14: Legislation relating to public bodies

73. Paragraph 14 inserts a reference to Community Justice Scotland into various pieces of legislation relating to public bodies in Scotland.

Schedule 2 – Part 1

74. This schedule is introduced by section 38 and makes modifications to other pieces of legislation in consequence of the Act.

Paragraph 1

75. Paragraph 1 amends section 27 of the Social Work (Scotland) Act 1968 and section 8 of the Management of Offenders etc. (Scotland) Act 2005 so that funding for the delivery of criminal justice social work services will flow direct from the Scottish Ministers to local authorities. At present, funding flows from Scottish Ministers to local authorities via community justice authorities, which are dis-established by the Act. Paragraph 1(3)(b)(i) reinstates a reference to section 27ZA of the Social Work (Scotland) Act 1968 into section 27A of that Act. This reference was removed by an earlier amendment and it is now considered appropriate to restore it. The effect is to revive the Scottish Ministers' power to provide grants to local authorities in order to provide advice, guidance or assistance to the persons prescribed in the said provision.

Paragraph 2

76. Section 227M of the Criminal Procedure (Scotland) Act 1995 sets out what is required of local authorities and the Scottish Ministers in the arrangements for annual reports on community payback orders. Paragraph 2 amends section 227M and inserts a number of sub-sections to alter the existing arrangements for the submission and timing of reports. The effect of the amendments to section 227M is to require local authorities to submit their report to Community Justice Scotland rather than to the Scottish Ministers, and for Community Justice Scotland to collate the local authority reports into one summarised report which it will lay before the Parliament. The timing of the community payback reports is now to be aligned with the timing requirement for submission of annual performance reports in section 27 of the Act. The amendments also allow Community Justice Scotland to produce the collated community payback order report alongside, or as part of, the report on performance under section 27 of the Act.

Paragraph 3

77. As the Act abolishes community justice authorities, the reference to them in schedule 3 of The Ethical Standards in Public Life etc. (Scotland) Act 2000 is to be deleted. Schedule 3 lists the devolved public bodies who are subject to that Act.

Paragraph 4

78. As the Act abolishes community justice authorities, the reference to them in paragraph 62A of schedule 1 to the Freedom of Information (Scotland) Act 2002 is to be deleted. Schedule 1 sets out a list of the bodies who are subject to that Act.

Paragraph 5

79. Sub-paragraphs (1) and (2) amend the Management of Offenders etc. (Scotland) Act 2005 to remove the references to community justice authorities in section 1 of that Act, in consequence of the abolition of those bodies.
80. Sub-paragraph (3) amends the arrangements for assessing and managing risks posed by certain offenders set out in section 11(2) of the Management of Offenders etc. (Scotland) Act 2005. It repeals section 11(2)(c) which requires reports to be submitted by the responsible authorities to the community justice authorities. It also inserts new subsections (4) to (6) into section 11 of the Management of Offenders (Scotland) Act 2005 which require the responsible authorities to publish their report on the discharge of their functions conferred by section 10 of that Act in such a manner as will ensure that the report is likely to come to the attention of the other community justice partners for the area of the local authority.
81. Sub-paragraph (4) repeals section 21(12) of the Management of Offenders etc. (Scotland) Act 2005 which inserts a reference to community justice authorities in Part 7 of schedule 1 to the Freedom of Information (Scotland) Act 2002.
82. Sub-paragraph (5) removes the reference to community justice authorities from the interpretation section of the Management of Offenders etc. (Scotland) Act 2005.

Schedule 2 – Part 2

83. **Paragraph 6** lists three orders associated with the Management of Offenders etc. (Scotland) Act 2005 which are revoked as a consequence of the abolition of community justice authorities by the Act.

PARLIAMENTARY HISTORY

84. The following table sets out, for each stage of the proceedings in the Scottish Parliament on the Bill for the Act, the dates on which the proceedings at that stage took place, and the references to the official report of those proceedings. It also shows the dates on

*These notes relate to the Community Justice (Scotland) Act 2016 (asp 10)
which received Royal Assent on 21 March 2016*

which Committee Reports and other papers to the Act were published, and references to those reports and papers.

<i>Proceedings and reports</i>	<i>Reference</i>
Bill as introduced – 7 May 2015	Bill (As Introduced) (592KB pdf posted 8 May 2015)
Spice Briefing	http://www.scottish.parliament.uk/ResearchBriefingsAndFactsheets/S4/SB_15-46_Community_Justice_Scotland_Bill.pdf
Stage 1 Justice Committee	
1 September 2015 (evidence)	http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=10055
15 September 2015 (evidence)	http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=10086
22 September 2015 (evidence)	http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=10100
6 October (evidence)	http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=10136
3 November 2015 (evidence)	http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=10176
Stage 1 Report	http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/89548.aspx#sthash.C9KEo0VO.dpuf
Finance Committee	
9 September 2015	http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=10074
1 October 2015	http://www.scottish.parliament.uk/S4_FinanceCommittee/Reports/FI-CommunityJusticeBillReportFinal.pdf
Delegated Powers and Law Reform Committee	
1 September 2015	http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=10059
30 September 2015	http://www.scottish.parliament.uk/S4_SubordinateLegislationCommittee/Reports/DPLRS042015R55.pdf

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Proceedings and reports	Reference
3 November 2015	http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx? r=10178
Consideration by the Parliament	
Stage 1 Debate – 19 November 2015 (cols.35 -92)	http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx? r=10213&i=94090
	http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx? r=10213&mode=pdf
Stage 2 Justice Committee	
19 January 2016	http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx? r=10322
26 January 2016	http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx? r=10338
Bill as amended at Stage 2	http://www.scottish.parliament.uk/S4_Bills/Community%20Justice %20(Scotland)%20Bill/SPBill68AS042016.pdf
Spice Briefing consideration prior to Stage 3	http://www.scottish.parliament.uk/ResearchBriefingsAndFactsheets/S4/ SB_16-14_Community_Justice_Bill_Stage_3.pdf
Stage 3 Consideration by the Parliament	
Stage 3 Debate 11 February 2016 (cols.)	http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx? r=10365&i=95390
Bill as passed 11 February 2016	http://www.scottish.parliament.uk/S4_Bills/Community%20Justice %20(Scotland)%20Bill/SPBill68BS042016.pdf
Royal Assent 21 March 2016	http://www.legislation.gov.uk/asp/2016/10/contents/enacted