

Draft Order laid before the Scottish Parliament under Section 3(25)(a) of the Management of Offenders etc (Scotland) Act 2005, for approval by resolution of the Scottish Parliament

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2006 No.

CRIMINAL LAW

**The Community Justice Authorities (Establishment,
Constitution and Proceedings) (Scotland) Order 2006**

Made - - - - 2006
Coming into force - - 3rd April 2006

The Scottish Ministers, in exercise of the powers conferred by section 3(1) of the Management of Offenders etc. (Scotland) Act 2005(1) and of all other powers enabling them in that behalf, hereby make the following Order, a draft of which has, in accordance with section 3(25)(a) of that Act, been laid before and approved by resolution of the Scottish Parliament:

Citation, Commencement and Interpretation

1.—(1) This Order may be cited as the Community Justice Authorities (Establishment, Constitution and Proceedings) (Scotland) Order 2006 and shall come into force on 3rd April 2006.

(2) In this Order—

“authority” means a community justice authority established by article 2 of this Order;

“local authority election” means an election conducted in terms of section 5 of the Local Government etc (Scotland) Act 1994(2);

“relevant local authority” means, in relation to any community justice authority specified in the first column of the Schedule to this Order, one of the local authorities specified in the second column of the Schedule to this Order, adjacent to the name of the community justice authority.

Establishment and Constitution of Community Justice Authorities

2.—(1) There shall be 8 authorities and, subject to any resolution passed under paragraph (4), they shall have the names specified in the first column of the Schedule to this Order.

(1) 2005 asp 14.

(2) 1994 c. 39; section 5 was amended by the [Scottish Local Government \(Elections\) Act 2002 \(asp 1\)](#), section 1 and was repealed in part by the [Local Governance \(Scotland\) Act 2004 \(asp 9\)](#), section 5(2).

(2) The area of each authority shall correspond with the area of the relevant local authority or, as the case may be, the total area of the relevant local authorities, specified in the second column of the Schedule to this Order.

(3) Each authority shall comprise the total number of members specified in the fourth column of the Schedule to this Order, the members being appointed by the local authorities specified in the second column of the Schedule, and each of these local authorities appointing the number of members specified in the third column of the Schedule.

(4) An authority may resolve at a meeting of the authority to change its name and on doing so shall notify the Scottish Ministers of the new name.

Appointment of Members and Duration of Membership

3.—(1) Subject to the provisions of article 12(1), each member shall be appointed by the relevant local authority at the first meeting of the relevant local authority after a local authority election or, as the case may be, at the first meeting of the relevant local authority following receipt by it of a notice from the authority under paragraph (4).

(2) Such appointment shall have effect until the first meeting of the relevant local authority after the subsequent local authority election.

(3) Each relevant local authority shall determine the process to be followed by it for selecting and appointing the member or members that it is required to appoint in terms of paragraph (1).

(4) A member may resign from office as a member of the authority by giving written notice to that effect to the Chief Officer of the authority and on receipt of such notice, or following the death of a member, the authority shall inform the relevant local authority of the resulting vacancy and request that authority to appoint a new member, who shall remain in office until the expiry of the current term of office of the members of the authority.

(5) A member shall cease to be a member of the authority immediately on ceasing to be a member of the relevant local authority.

(6) A relevant local authority may, on giving notice in writing to the member concerned and to the Chief Officer of the authority, at any time terminate the membership of the authority of any member that it has appointed in terms of paragraph (1).

(7) In the event that a member ceases to be a member of the authority the relevant local authority shall as soon as reasonably practicable arrange for the appointment of a new member, who shall remain in office until the expiry of the current term of office of the members of the authority.

(8) A relevant local authority may, if a member that it has appointed is unable to attend any meetings of the authority, or at any time when there is a vacancy among the members to be appointed by that relevant local authority, appoint another member of the relevant local authority to attend in that member's place and for the purposes of this Order the person so appointed shall, while holding that appointment, be deemed to be a member of the authority.

(9) Any vacancy, and any defect in the appointment of a member of the authority or the convener or deputy convener of that authority, shall not invalidate any proceedings of the authority.

Convenership

4.—(1) At its first meeting the authority shall appoint a convener and a deputy convener from the members of the authority and they shall hold office until the day of the next local authority election.

(2) The convener, or the deputy convener in the convener's absence, shall preside at meetings of the authority.

(3) In the event that both the convener and deputy convener are absent from any meeting the members present shall appoint from their number a convener for that meeting.

(4) In the event that there are an equal number of votes cast at a meeting the convener presiding at that meeting shall have a casting vote as well as a deliberative vote.

(5) Subject to the provisions of paragraph (1), the convener and the deputy convener, shall each hold office for a period of one council term, and at the first meeting of the authority after a local authority election the authority shall appoint a convener and deputy convener.

(6) Subject to the provisions of paragraph (7), the convener and deputy convener may not hold office as such for more than two consecutive periods of office, but may otherwise be eligible for reappointment.

(7) A member appointed to the office of convener or deputy convener in terms of paragraphs (1) or (5) may, having held that office for two consecutive periods of office, be appointed as deputy convener, or convener, as the case may be, and may hold that office for a further period of two consecutive terms of office, provided that no member may hold the office of convener and deputy convener for more than four consecutive terms of office in total.

(8) In paragraph (5) “council term” means the period commencing on the day after the date of the first meeting of the relevant local authority after a local authority election and ending on the day of the next local authority election following that meeting.

Meetings

5.—(1) Subject to the provisions of article 12(5) meetings of the authority shall be held at such places and times as the authority may determine.

(2) Subject to the provisions of this Order, and any Standing Orders made under article 8, the authority shall determine the procedures to be followed at any meeting.

(3) The following bodies or persons may attend, or be represented at, any meeting of the authority, and they or their representatives may, at the discretion of the convener presiding at the meeting, participate in the deliberations of the authority, but may not vote—

- (a) partner bodies within the meaning of section 3(23) of the Management of Offenders etc. (Scotland) Act 2005;
- (b) the Chief Social Work Officer of each relevant local authority; and
- (c) such other bodies or persons as may be specified by the authority in standing orders made under article 8.

(4) Meetings of the authority shall be open to members of the public unless the authority resolves that any meeting, or discussion or vote in the course of a meeting, should be held in private.

(5) Where the authority passes a resolution in terms of paragraph (4) it may also resolve to exclude partner bodies, Chief Social Work Officers or any other bodies or persons, or their representatives, otherwise entitled to attend such meetings in terms of paragraph (3).

Voting

6.—(1) All members of the authority present at a meeting shall be entitled to vote.

(2) Subject to the provisions of paragraph (3) all decisions of the authority shall be decided by a simple majority of votes cast by those attending.

(3) At least two thirds of the members present and voting at a meeting are required for any decision relating to—

- (a) the appointment of the convener and deputy convener;
- (b) the adoption by the authority of standing orders or any amendments thereto; and
- (c) any change of name of the authority in accordance with article 2(4).

Quorum

7. The quorum for meetings of the authority is specified in the fifth column of the Schedule to this Order.

Standing Orders

8. The authority may make and revise standing orders regulating the procedures and business of the authority and any committees that may be established under article 9 of this Order.

Committees

9.—(1) The authority may determine that any matters requiring its consideration may be referred to a committee of the authority established by the authority.

(2) A committee established under paragraph (1) shall comprise such members of the authority as it shall determine and such other persons who are not members of the authority as the authority may wish to appoint to assist the committee in the exercise of its functions.

(3) A committee established under paragraph (1) shall be responsible for determining its own procedure, subject to such direction as the authority thinks fit.

(4) A committee established under paragraph (1) may assist the authority with the exercise of its functions but shall not have the power to exercise functions, or take decisions, on the authority's behalf.

Allowances and expenses

10.—(1) The provisions of the Local Authorities Etc. (Allowances) (Scotland) Regulations 1995(3) shall apply in relation to payment of allowances to members of the authority, subject to the reference to a local authority in those Regulations being construed as a reference to an authority and the references to “member of the authority” and “councillor” being construed as a reference to a member of the authority.

(2) An authority may pay such reasonable expenses as the authority may determine to any persons who are not members of the authority, but assist the authority in the exercise of its functions, by participating as members of a committee or otherwise, in accordance with the terms of this Order.

Services by local authorities

11.—(1) Any relevant local authority specified in the second column of the Schedule to this Order may, if requested by the corresponding authority specified in the first column, supply such administrative functions in relation to the exercise of the authority's functions as it may require.

(2) An authority may make such arrangements as it considers necessary with one or more of the relevant local authorities including, without prejudice to the generality of this provision, arrangements for the secondment of staff from the relevant local authority to the authority, where any member of staff of the authority is temporarily unable to fulfil the duties of the post whether due to illness or otherwise.

(3) Where a relevant local authority provides administrative functions in accordance with paragraph (1), or makes arrangements in accordance with paragraph (2), the authority shall pay to the relevant local authority the reasonable costs incurred by the relevant local authority in providing those functions, or making those arrangements.

(3) S.I.1995/912; amended by S.I. 1997/1631 and S.I. 1998/3219, and S.S.I. 2002/15 and 2004/146.

Preliminary arrangements

12.—(1) The first members appointed by the relevant local authorities specified in the second column of the Schedule shall be appointed by the relevant local authority as soon as reasonably practicable after the date of commencement of this Order, and before such date as Scottish Ministers may specify, and shall hold office until the first meeting of the relevant local authority following the next local authority election.

(2) Scottish Ministers may designate a relevant local authority as responsible for making such arrangements for each authority as may be required prior to, and at, the first meeting of the authority, including making arrangements for that meeting.

(3) Subject to the provisions of paragraph (4), the member appointed under article 3(1) by the relevant local authority designated by Scottish Ministers for each authority under paragraph (2) shall act as convener at the first meeting of that authority until a convener is appointed in accordance with article 4(1).

(4) Where a relevant local authority designated by Scottish Ministers under paragraph (2) is required to appoint more than one member of the authority, the member who shall act as convener for the purposes of paragraph (3) shall be the older or oldest of the members so appointed.

(5) The first meeting of the authority shall take place no later than such date as Scottish Ministers may specify.

St Andrew's House,
Edinburgh
February 2006

Authorised to sign by the Scottish Ministers

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument:
The Community Justice Authorities (Establishment, Constitution and Proceedings) (Scotland) Order 2006 No. 182

SCHEDULE

| <i>Name of Community Justice Authority</i> | <i>Relevant Local Authority</i> | <i>Number of members to be appointed by each local authority</i> | <i>Total number of members</i> | <i>Quorum</i> |
|--|---------------------------------|--|--------------------------------|---------------|
| Glasgow | Glasgow City | 7 | 7 | 5 |
| Northern | Aberdeen City | 1 | 7 | 5 |
| | Aberdeenshire | | | |
| | Eilean Siar | | | |
| | Highland | | | |
| | Moray | | | |
| | Orkney | | | |
| | Shetland | | | |
| Tayside | Angus | 2 | 6 | 4 |
| | Dundee City | | | |
| | Perth and Kinross | | | |
| Fife and Forth Valley | Clackmannanshire | 1 | 10 | 7 |
| | Falkirk | 3 | | |
| | Fife | 4 | | |
| | Stirling | 2 | | |
| Lothian and Borders | City of Edinburgh | 1 | 5 | 3 |
| | East Lothian | | | |
| | Midlothian | | | |
| | West Lothian | | | |
| | Scottish Borders | | | |
| North Strathclyde | Argyll and Bute | 1 | 6 | 4 |
| | East Dunbartonshire | | | |
| | East Renfrewshire | | | |

| <i>Name of Community Justice Authority</i> | <i>Relevant Local Authority</i> | <i>Number of members to be appointed by each local authority</i> | <i>Total number of members</i> | <i>Quorum</i> |
|--|---------------------------------|--|--------------------------------|---------------|
| | Inverclyde | | | |
| | Renfrewshire | | | |
| | West Dunbartonshire | | | |
| Lanarkshire | North Lanarkshire | 3 | 6 | 4 |
| | South Lanarkshire | | | |
| South West Scotland | Dumfries and Galloway | 1 | 4 | 3 |
| | East Ayrshire | | | |
| | North Ayrshire | | | |
| | South Ayrshire | | | |

EXPLANATORY NOTE

(This note is not part of the Order)

This Order establishes, and makes provision for the constitution of, Community Justice Authorities (referred to in this note as “CJAs”). The number and name of each CJA, and the local authorities responsible for appointing the members of each CJA, are specified in Article 2 of, and the Schedule to, the Order.

Article 3 makes provision for the appointment of members, and substitutes for any members who are unable to attend meetings of the CJA.

Article 4 makes provision for the appointment of a convener and deputy convener for each CJA, and for their periods of office.

Article 5 makes provision for the conduct of meetings, which must be held in public unless the CJA resolves otherwise. Provision is made in article 5(3) for other persons or bodies to attend or be represented, and to participate, at meetings of the CJA, but not to vote.

Article 6 makes provision for voting. Article 7 and the Schedule specify the quorum for each meeting of the CJA.

Article 8 permits each CJA to make and revise Standing Orders for the conduct of business.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument:
The Community Justice Authorities (Establishment, Constitution and Proceedings) (Scotland) Order 2006 No. 182

Article 9 permits each CJA to establish committees which shall comprise members of the CJA. The CJA may appoint individuals who are not members of the CJA to assist the committee. The committee shall determine its own procedure. It may assist the CJA in the exercise of its functions but not act on behalf of the CJA.

Article 10 provides for the payment of allowances to members of the CJA in accordance with the Local Authorities Etc. (Allowances) (Scotland) Regulations 1995, and expenses to non members of the CJA. The CJA will determine the amount of these expenses.

Article 11 enables a CJA to make arrangements with a relevant local authority for the supply of administrative functions, and other arrangements such as the secondment of staff. The CJA will pay for the reasonable cost of providing those functions or arrangements.

Article 12 makes necessary preliminary arrangements.