

*Draft Order laid before the Scottish Parliament under Section 22(4) of the Management of Offenders etc. (Scotland) Act 2005, for approval by resolution of the Scottish Parliament*

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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2006 No.**

**CRIMINAL LAW**

**The Management of Offenders etc. (Scotland)  
Act 2005 (Supplementary Provisions) Order 2006**

*Made - - - - 2006*

*Coming into force in accordance with article 1(1)*

The Scottish Ministers, in exercise of the powers conferred by section 22(1) and (2) 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 22(4) 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 Management of Offenders etc. (Scotland) Act 2005 (Supplementary Provisions) Order 2006 and shall come into force on the day after the date on which it is made.

(2) In this Order—

“the 1989 Act” means the Local Government and Housing Act 1989(2); and

“the 2005 Act” means the Management of Offenders etc. (Scotland) Act 2005.

**Restrictions on political activity**

2.—(1) The post of chief officer of a community justice authority is a politically restricted post and the provisions of the Local Government Officers (Political Restrictions) Regulations 1990(3)

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(1) 2005 asp 14.

(2) 1989 c. 42; section 9 was amended, in so far as applying to Scotland, by the Local Government etc. (Scotland) Act 1994 (c. 39), Schedule 13, paragraph 161(6), and was repealed in part by Schedule 14 to that Act. Section 21 was amended by the Local Government etc. (Scotland) Act 1994 (c. 39), Schedule 13, paragraph 161(8); the Police Act 1997 (c. 50), Schedule 6, paragraph 29; the Greater London Authority Act 1999 (c. 29), Schedule 27, paragraph 63 and Schedule 29, paragraph 55; the Criminal Justice and Police Act 2001 (c. 16), Schedule 6, paragraph 50; the Fire and Rescue Services Act 2004 (c. 21), Schedule 1, paragraph 71; the Civil Contingencies Act 2004 (c. 36), Schedule 2, paragraph 10; S.I. 1996/3071, article 2 and Schedule, paragraph 3 and S.I. 2001/2237, article 25. Section 21 was also repealed in part by the Environment Act 1995 (c. 25), Schedule 24.

(3) S.I. 1990/851; amended by S.I. 1998/3116.

shall apply as if the post was a politically restricted post under a local authority and the person was appointed otherwise than pursuant to section 9 of the 1989 Act.

(2) The terms and conditions of employment of all employees of a community justice authority, other than the chief officer, shall incorporate terms and conditions that prohibit any such employee from announcing, or authorising or permitting others to announce that they are or intend to be a candidate for election as a member of a local authority whose boundaries lie within the area of the community justice authority of which they are an employee.

(3) A person who is a member of—

- (a) the House of Commons;
- (b) the Scottish Parliament;
- (c) the European Parliament; or
- (d) a local authority within the meaning of section 21(1) or (2) of the 1989 Act,

shall be disqualified from appointment as chief officer of a community justice authority.

(4) A person who is a member of a local authority in Scotland shall be disqualified from appointment to any paid office or employment, other than as chief officer, of the community justice authority within whose boundaries that local authority lies.

### **Restrictions on appointment of Chief Officer**

**3.**—(1) Subject to the provisions of paragraph (2) a community justice authority may not appoint as chief officer, in terms of section 4(2)(a) of the 2005 Act, a person who holds a paid office or employment with (a) any local authority in Scotland or (b) a partner body within the meaning of section 3(23) of the 2005 Act, or is a member of staff of the Scottish Administration within the meaning of section 126(7) of the Scotland Act 1998 unless, before commencing the appointment as chief officer, that person has resigned from that paid office or employment or has ceased to be such a member of staff.

(2) Notwithstanding the provisions of paragraph (1), but subject to the provisions of paragraph (3), a community justice authority may arrange with the relevant employer that an employee of a local authority or partner body or a member of staff of the Scottish Administration, as the case may be, be seconded to the community justice authority to undertake the role of chief officer provided the secondment is for a period of not less than 2 years.

(3) The provisions of paragraph (2) shall not apply to any arrangement, whether described by the parties to it as a secondment or otherwise, whereby the person appointed to undertake the role of chief officer of the community justice authority, during the period of that appointment also exercises functions as an employee or holder of paid office of the local authority or partner body or as a member of staff of the Scottish Administration.

### **Criminal Conviction Certificate relating to Chief Officers**

**4.** A community justice authority shall not appoint a person as chief officer in terms of section 4(2)(a) of the 2005 Act unless that person has first obtained and produced to the community justice authority a criminal conviction certificate issued under section 112 of the Police Act 1997<sup>(4)</sup> and the community justice authority is satisfied that any convictions disclosed in that certificate will not materially affect that person's suitability to perform the duties of chief officer.

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(4) 1997 c. 50; to which no relevant amendments have been made.

### **Ineligibility for jury service**

5. Part I of Schedule 1 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980<sup>(5)</sup> is amended by inserting at the end of Group B—

“(wb) chief officers of community justice authorities established under section 3 of the Management of Offenders etc. (Scotland) Act 2005.”.

### **Amendment of the Employers' Liability (Compulsory Insurance) Regulations 1998**

6. Schedule 2 to the Employers' Liability (Compulsory Insurance) Regulations 1998<sup>(6)</sup> is amended by inserting at the end—

“16. A community justice authority established under section 3 of the Management of Offenders etc. (Scotland) Act 2005.”.

### **Amendment of the Re-use of Public Sector Information Regulations 2005**

7. Regulation 3(1) of the Re-use of Public Sector Information Regulations 2005<sup>(7)</sup> is amended by inserting at the end—

“(y) a community justice authority established under section 3 of the Management of Offenders etc. (Scotland) Act 2005.”.

St Andrew's House,  
Edinburgh  
2006

Authorised to sign by the Scottish Ministers

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(5) 1980 c. 55; Group B of Part I of Schedule 1 was amended by paragraph 17 of Schedule 2 to the Prisons (Scotland) Act 1989 (c. 45), paragraph 45 of Schedule 10 to the Criminal Justice and Public Order Act 1994 (c. 33), paragraph 7 of Schedule 1 to the Crime and Punishment (Scotland) Act 1997 (c. 48), paragraph 41 of Schedule 9 to the Police Act 1997 (c. 50) and paragraph 40 of Schedule 4 to the Serious Organised Crime and Police Act 2005 (c. 15), and was repealed in part by Schedule 7 to the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c. 9).

(6) S.I. 1998/2573, as amended by S.I. 1999/1820, S.I. 2000/253, S.I. 2003/1615 and S.I. 2004/2882.

(7) S.I. 2005/1515.

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order makes supplementary provisions that Scottish Ministers consider to be necessary or expedient following the establishment of Community Justice Authorities (referred to in this Note as “CJAs”) and appointment of chief officers and other staff of CJAs, in terms of the Management of Offenders etc. (Scotland) Act 2005.

The post of chief officer will be “politically restricted” and the holder of the post may not participate in political activity or stand for election to the House of Commons, the Scottish Parliament, the European Parliament or any local authority and members of these Parliaments and local authorities will be disqualified from appointment as a chief officer. Other CJA staff will be disqualified from membership of a local authority in the CJA area, and local authority members will be disqualified from appointment as a member of staff (other than the chief officer), or as holder of any paid office, of the CJA for that local authority’s area (article 2).

A CJA may not appoint as chief officer an employee of a local authority in Scotland or a partner body or a member of staff of the Scottish Administration unless the proposed appointee resigns from that employment. However this requirement does not prevent a secondment arrangement provided it is for a period of not less than 2 years and during the period of secondment the person does not exercise functions as an employee or holder of paid office on behalf of the seconding authority or body (article 3).

An applicant for the post of chief officer will need to produce to the CJA a criminal conviction certificate prior to appointment, and prior to making the appointment the CJA will need to be satisfied that any convictions disclosed in the certificate would not materially affect the person’s suitability to perform the duties of chief officer (article 4).

Chief officers will be ineligible for jury service (article 5).

CJAs will be exempt from the requirement to maintain employers' liability insurance (article 6) and will be subject to the Re-use of Public Sector Information Regulations 2005 (article 7).