

COMMUNITY JUSTICE (SCOTLAND) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

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

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

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.