



Management of Offenders etc. (Scotland) Act 2005

2005 asp 14

Community justice authorities

3 Community justice authorities

- (1) The Scottish Ministers may by order made by statutory instrument establish, for an area specified in the order, a body corporate to be known as a community justice authority.
- (2) A community justice authority is not to be regarded as the servant or agent of the Crown or have any status, immunity or privilege of the Crown; nor are its members or employees to be regarded as civil servants.
- (3) Subject to subsection (4), an order under subsection (1) may include provision with regard to—
 - (a) the constitution and proceedings of the community justice authority;
 - (b) matters relating to the membership of that authority; and
 - (c) the supply of services or facilities by appropriate local authorities to that authority.
- (4) No person may be a member of the community justice authority who is not—
 - (a) a councillor of an appropriate local authority; and
 - (b) nominated for such membership by that authority.
- (5) The functions of a community justice authority are—
 - (a) at such intervals as the Scottish Ministers may determine—
 - (i) to prepare, in consultation with the partner bodies, the Scottish Ministers, the appropriate local authorities and such other bodies as the Scottish Ministers may specify, a plan for reducing re-offending by relevant persons; and
 - (ii) to submit that plan to the Scottish Ministers (the plan as approved under subsection (21) being referred to in this section and in section 5 as the community justice authority's "area plan");
 - (b) to monitor the performance of—

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- (i) appropriate local authorities; and
 - (ii) the Scottish Ministers,

in complying with, and in co-operating with each other, the community justice authority and others to facilitate compliance with, the area plan;
 - (c) in so far as it considers such performance by—
 - (i) a local authority to be unsatisfactory, to issue such directions to that authority; or
 - (ii) the Scottish Ministers to be unsatisfactory, to make such recommendations to the Scottish Ministers,

as it thinks fit;
 - (d) to promote good practice in the management of the behaviour of relevant persons (“management” being management with a view to reducing re-offending by those persons);
 - (e) to allocate to the appropriate local authorities any amount paid to it under—
 - (i) section 27A(1) of the Social Work (Scotland) Act 1968 (c. 49) (grants in respect of community service facilities); or
 - (ii) section 27B(1) of that Act (grants in respect of hostel accommodation for persons under supervision);
 - (f) to arrange with the partner bodies that, so far as practicable, any information—
 - (i) relating to relevant persons; and
 - (ii) in the possession of any of those party to the arrangements,

is furnished or made available to the others party to them;
 - (g) as soon as practicable after the end of each financial year, to report to the Scottish Ministers on—
 - (i) its activities and performance during that year in discharging its functions under this section; and
 - (ii) the activities and performance during that year of appropriate local authorities, partner bodies and the Scottish Ministers in complying with, or facilitating compliance with, the area plan; and
 - (h) any function which it has by virtue of section 8 of this Act.
- (6) Any grant paid to a local authority by virtue of subsection (5)(e) is subject to such conditions as the community justice authority may determine.
- (7) But conditions determined under subsection (6) are subject to any conditions determined, as respects the grant in question, under section 27A(1B) or 27B(1B) of the Social Work (Scotland) Act 1968 by the Scottish Ministers.
- (8) In preparing a report under paragraph (g) of subsection (5), the community justice authority is to consult as mentioned in paragraph (a)(i) of that subsection.
- (9) A report made under paragraph (g) of subsection (5) must be published by the community justice authority in such manner as it considers appropriate.
- (10) A community justice authority is, on receiving a report submitted to it under section 11(2)(c), to send a copy of that report to the Scottish Ministers.
- (11) The Scottish Ministers may by order made by statutory instrument amend subsection (5) so as (either or both)—
- (a) to add to the functions for the time being described;
 - (b) to alter or omit any of those functions.

- (12) Different provision may be made under subsection (11) for different community justice authorities.
- (13) The Scottish Ministers are from time to time to inspect and assess the arrangements set in place, and the services provided, by local authorities for complying with the area plan and to satisfy themselves as to the sufficiency of those arrangements and services.
- (14) The Scottish Ministers—
- (a) may from time to time issue to a community justice authority guidance as to—
 - (i) the exercise of its functions; or
 - (ii) its actings under section 4; and
 - (b) where they have issued such guidance but are satisfied that the authority—
 - (i) is not complying; and
 - (ii) is not likely to comply,with it, may issue directions to the authority as to the exercise or actings in question.
- (15) But before issuing directions under subsection (14)(b), the Scottish Ministers are—
- (a) to give written notice of at least 7 days to the community justice authority that they intend to issue the directions; and
 - (b) to consider any representations in that regard made to them, within those 7 days, by the authority.
- (16) The community justice authority may appeal to the sheriff, against any directions so issued, on the grounds (either or both)—
- (a) that the directions are unreasonable,
 - (b) that to issue them was unreasonable.
- (17) Within one month after issuing any such directions the Scottish Ministers are to lay a report before the Parliament containing a copy of the directions and a statement as to the reason for issuing them.
- (18) In carrying out—
- (a) their functions under section 27 of the Social Work (Scotland) Act 1968, an appropriate local authority are;
 - (b) by virtue of section 8 (of this Act), its functions, or functions on behalf of an appropriate local authority, under that section 27, a community justice authority is,
- so far as practicable, to comply with the area plan.
- (19) The Scottish Ministers are, so far as practicable, to comply with the area plan.
- (20) If directions are issued—
- (a) under subsection (5)(c)(i), the local authority receiving the directions;
 - (b) under subsection (14)(b), the community justice authority,
- must comply with them.
- (21) The Scottish Ministers, on receiving a plan by virtue of sub-paragraph (ii) of subsection (5)(a), may approve it or require the authority to revise the plan, in such manner as the Scottish Ministers may specify, and to re-submit it under that sub-paragraph.

- (22) Subsection (21) applies in relation to a plan re-submitted as it applies to one submitted.
- (23) In this section—
 an “appropriate local authority” is a local authority the area of which is comprised within the area of the community justice authority; and
 “partner bodies” means such persons as are for the time being designated as partner bodies for the purposes of this section by the Scottish Ministers by order made by statutory instrument.
- (24) The references in subsections (5)(b)(ii) and (g)(ii) and (19) to the Scottish Ministers are to the Scottish Ministers in exercise of their functions under the Prisons (Scotland) Act 1989 (c. 45) as is the first reference to the Scottish Ministers in each of paragraphs (a)(i) and (c)(ii) of subsection (5).
- (25) A statutory instrument containing an order under—
 (a) subsection (1) or (11) is not made unless a draft of the instrument has been laid before, and approved by resolution of, the Parliament;
 (b) subsection (23) is subject to annulment in pursuance of a resolution of the Parliament.

4 Further provisions as respects community justice authorities

- (1) Subject to any directions issued under section 3(14)(b), a community justice authority may do anything which appears to it to be necessary or expedient for the purpose of, or in connection with the exercise of, its functions; and without prejudice to that generality may in particular enter into contracts.
- (2) A community justice authority—
 (a) is to appoint a chief officer; and
 (b) may appoint as staff such other persons as it considers requisite for enabling it to exercise its functions.
- (3) The remuneration and conditions of service of a chief officer or other person appointed under subsection (2) are to be such as the community justice authority may determine.
- (4) A community justice authority may—
 (a) pay, or make arrangements for the payment of;
 (b) make payments towards the provision of; and
 (c) provide and maintain schemes (whether contributory or not) for the payment of,
 such pensions, allowances and gratuities to or in respect of its employees, or former employees, as it thinks fit.
- (5) The reference in subsection (4) to pensions, allowances and gratuities includes a reference to pensions, allowances and gratuities by way of compensation for loss of employment or reduction in remuneration.
- (6) The expenditure of a community justice authority, in so far as it is not met from any other source, may be paid by the Scottish Ministers.

5 Special duties of chief officer of community justice authority

- (1) Where it appears to the chief officer of a community justice authority that—

- (a) the authority is failing, or has failed, satisfactorily to exercise its functions under this Act; or
 - (b) an appropriate local authority or the Scottish Ministers are failing to comply with the community justice authority's area plan,
- the chief officer is, as soon as practicable, to report the failure to the Scottish Ministers.
- (2) Without prejudice to section 3(5)(g)(ii), the chief officer is, whenever required to do so by the Scottish Ministers, to report to them on the activities and performance, during such period as is specified in the requirement, of the community justice authority, appropriate local authorities, partner bodies and the Scottish Ministers in complying with, or facilitating compliance with, the community justice authority's area plan.
- (3) In subsections (1) and (2), "appropriate local authority" means a local authority the area of which is comprised within the area of the community justice authority; and in subsection (2), "partner bodies" means such persons as are designated by order under section 3(23) as partner bodies.
- (4) The reference in subsection (1)(b) to the Scottish Ministers is to the Scottish Ministers in exercise of their functions under the Prisons (Scotland) Act 1989 (c. 45) as is the second reference to the Scottish Ministers in subsection (2).

6 Power of Scottish Ministers to require action by community justice authority: failure by that authority

- (1) Where it appears to the Scottish Ministers on a report under section 5 or by a person mentioned in subsection (2)—
- (a) that a community justice authority is failing, or has failed, satisfactorily to exercise its functions under this Act; and
 - (b) that the issue under this section of an enforcement direction to the authority would be justified,
- they may issue a preliminary notice to the authority.
- (2) The persons are—
- (a) a person authorised under section 6(1) of the Social Work (Scotland) Act 1968 (c. 49) (supervision of establishments providing accommodation for persons and inspection of records etc.);
 - (b) Her Majesty's Chief Inspector of Prisons for Scotland;
 - (c) Audit Scotland;
 - (d) a person specified by the Scottish Ministers for the purposes of this section and of section 7.
- (3) A preliminary notice is one which—
- (a) informs the authority of the apparent failure mentioned in subsection (1)(a); and
 - (b) requires the authority to submit to the Scottish Ministers, within such period as is specified in the notice, an appropriate written response.
- (4) An appropriate written response is one which—
- (a) states that the authority is not so failing (or as the case may be has not so failed) and gives reasons supporting that statement; or
 - (b) acknowledges that the authority is so failing (or has so failed) but gives reasons why an enforcement direction should not be issued to it.

- (5) If a response is given under subsection (4)(b), the authority must either describe in the response the measures it proposes to take to remedy the failure or explain why no such measures need be taken.
- (6) Where, following service of the preliminary notice and the expiry of the period specified in that notice, it still appears to the Scottish Ministers that the circumstances are as mentioned in paragraphs (a) and (b) of subsection (1), they may issue an enforcement direction to the authority.
- (7) An enforcement direction is one which requires the authority to take, within such time as is specified in the direction, such action as is so specified, being action for the purpose of remedying, or preventing the recurrence of, the failure.
- (8) An authority to which an enforcement direction is issued under this section must comply with it.
- (9) The Scottish Ministers may vary or revoke an enforcement direction.
- (10) The Scottish Ministers may, instead of or as well as issuing an enforcement direction to the authority, make such recommendations to the authority as they think fit.
- (11) When the Scottish Ministers issue, vary or revoke an enforcement direction they are to—
 - (a) prepare a report as to their exercise of the power in question; and
 - (b) lay that report before the Parliament.
- (12) The Scottish Ministers may by order made by statutory instrument amend subsection (2) so as (either or both)—
 - (a) to add to the persons there described;
 - (b) to alter the description of, or omit, any of those persons.
- (13) A statutory instrument containing an order under subsection (12) is not made unless a draft of the instrument has been laid before, and approved by resolution of, the Parliament.

7 Power of Scottish Ministers to require action by community justice authority: failure by local authority

- (1) Where it appears to the Scottish Ministers, on a report under section 5 or by a person mentioned in section 6(2)—
 - (a) that a local authority are failing, or have failed, satisfactorily to exercise their functions under section 27 of the Social Work (Scotland) Act 1968 (c. 49) (supervision and care of persons put on probation or released from prison etc.) in relation to—
 - (i) relevant persons; or
 - (ii) one relevant person provided that the person making the report considers such failure to be symptomatic of some general failure of the local authority in the exercise of their functions under that section; and
 - (b) that the issue under this section of an enforcement direction to the authority would be justified,
 they may issue a preliminary notice to the community justice authority.

- (2) Subsections (3) to (11) of section 6 apply in relation to an apparent failure mentioned in subsection (1)(a) (of this section) as they apply in relation to an apparent failure mentioned in subsection (1)(a) of that section.
- (3) For the purposes of that application references in those subsections of that section to “the authority” are to be construed as references to the community justice authority except that the references in paragraphs (a) and (b) of subsection (4) of that section are to be construed as references to the local authority.
- (4) But, notwithstanding that exception, the word “it” in paragraph (b) of subsection (4) of that section is to be construed as a reference to the community justice authority.

8 Transfer of functions to community justice authority

- (1) This section applies to functions under or by virtue of—
 - (a) any of sections 27(1) or (1A), 27ZA or 27B of the Social Work (Scotland) Act 1968 (c. 49) (supervision and care of persons put on probation or released from prison etc.) which are exercisable by local authorities; and
 - (b) the Prisons (Scotland) Act 1989 (c. 45) which are—
 - (i) exercisable by the Scottish Ministers; and
 - (ii) relate to the preparation of offenders for release from imprisonment or from detention in custody.
- (2) The Scottish Ministers may by order made by statutory instrument provide that, within the area of a community justice authority, a function—
 - (a) to which this section applies; and
 - (b) specified in the order,is instead to be exercisable by the community justice authority; but this subsection is subject to subsections (6) and (7).
- (3) A community justice authority and a local authority comprised within the area of the community justice authority may jointly determine that a function mentioned in paragraph (a) of subsection (1) is to be exercisable on behalf of that local authority by the community justice authority; but before any such joint determination is made the community justice authority must, as respects its proposed effect, consult—
 - (a) any local authority comprised within that area and not party to the joint determination;
 - (b) the partner bodies (as defined by section 3(23)); and
 - (c) the Scottish Ministers.
- (4) A community justice authority and the Scottish Ministers may jointly determine that a function mentioned in paragraph (b) of subsection (1) is (within the area of that authority) to be exercisable on behalf of the Scottish Ministers by the authority.
- (5) The Scottish Ministers may, under subsection (2), make different provision for different community justice authorities.
- (6) A statutory instrument containing an order under subsection (2) is not made—
 - (a) unless a draft of the instrument has been laid before, and approved by resolution of, the Parliament;
 - (b) in the case of functions mentioned in paragraph (a) of subsection (1), unless before the draft is so laid, the Scottish Ministers—

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- (i) have consulted, as respects the draft, the community justice authority and each of the local authorities comprised within the area of the community justice authority; and
 - (ii) subject to subsection (7), have secured the agreement of them all to its being so laid; and
 - (c) in the case of functions mentioned in paragraph (b) of subsection (1), unless before the draft is so laid, the Scottish Ministers—
 - (i) have consulted, as respects the draft, the community justice authority; and
 - (ii) have secured its agreement to its being so laid.
- (7) Where it is proposed to make an order under subsection (2) and a function exercisable by any of Orkney Islands Council, Shetland Islands Council and *Comhairle nan Eilean Siar* would, but for this subsection, become exercisable by a community justice authority were the order made, the council in question may, before the draft of the statutory instrument containing the order is laid before the Parliament, opt to retain the function; and where the council so opt then—
- (a) within the area of the council the function is to continue to be exercisable by them and not by the community justice authority (the draft being modified accordingly before being laid); and
 - (b) subsection (6)(b)(ii) does not require the Scottish Ministers to secure the agreement of the council to the draft being laid.

9 Transfer of property to community justice authority

- (1) For the purpose of facilitating the discharge by a community justice authority of that authority's functions, a local authority or the Scottish Ministers may transfer property to that authority.
- (2) If by virtue of the revocation of an order under section 8 a function ceases to be exercisable by a community justice authority, that authority must, if requested to do so by whomever is to exercise the function in consequence of the revocation, transfer to that person any property held by it wholly or mainly for the purpose of exercising the function.
- (3) Where transfer under subsection (1) or (2) occurs, no right of pre-emption or other similar right operates or becomes exercisable.
- (4) Subject to subsection (3), on the transfer of property under subsection (1) or (2), such rights and liabilities of the transferor as pertain to the property are transferred with it.