



Management of Offenders etc. (Scotland) Act 2005

2005 asp 14

Community justice authorities

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—
 - (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.