

CRIMINAL JUSTICE (SCOTLAND) ACT 2003

EXPLANATORY NOTES

THE ACT THE ACT IS IN 12 PARTS.

Part 1 – Protection of the Public at Large

The Risk Management Authority

Sections 6 to 9 – Risk management plans: preparation, further provision, implementation and review

37. As explained above, the RMA has a specific function in relation to offenders for whom a risk management plan (RMP) is to be prepared. Initially this will be for those offenders who are sentenced to an order for lifelong restriction (OLR). However, the Act makes provision for the Scottish Ministers to make an order prescribing other categories of offenders for whom a RMP would have to be prepared. There is a statutory requirement for the authorities who have responsibilities in connection with the relevant offenders when in prison or released into the community on licence to prepare a RMP. The RMP will detail the role of those authorities involved with the offender in minimising the risk the offender's being at liberty presents to the safety of the public at large. The RMA has a specific function to approve and monitor the implementation of the RMP. The provisions dealing with the preparation of the RMP, its implementation and review and the RMA's function in relation to these matters are set out in sections 6 to 9.
38. **Section 6** requires that a RMP must be prepared for an offender who is sentenced to an OLR, and any other category of offender which the Scottish Ministers may, by order, prescribe. The types of offences and the process by which an offender will be assessed for an OLR, including the criteria against which his or her level of risk will be measured, are dealt with in section 1.
39. Before making an order prescribing any new category of offender for whom a RMP will be required, the Scottish Ministers must consult the RMA and any other person as considered appropriate.
40. This section also prescribes that the RMP must contain an assessment of risk, the measures to be taken to minimise this risk and how these will be co-ordinated. The form of the RMP is to be specified and published by the RMA, which may also provide guidance as appropriate on how the form should be prepared, implemented and reviewed. The authority preparing the RMP must use the published form.
41. The purpose of a RMP is to ensure that the risk the offender's being at liberty presents to the safety of the public at large (offender's risk) is properly managed on a multi-disciplinary basis and will detail the role of those authorities or bodies involved in managing the offender's risk. The RMP may place responsibility for implementing the RMP on any person who could reasonably be expected to assist with the minimisation of the offender's risk.
42. **Section 7** prescribes that "the body" who will be responsible for preparing the RMP will be known as the "lead authority".

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2003 (asp 7) which received Royal Assent on 26 March 2003*

43. The identity of the lead authority following conviction will depend on the age of the offender and where the offender is liable to be detained or imprisoned.
44. There is no age limit on who may be sentenced to an OLR. If the offender is serving a sentence in prison or is being detained in a young offenders institution or is a child and is detained in some other establishment under section 208 of the Criminal Procedure (Scotland) Act 1995, the lead authority will be the Scottish Ministers. If the offender has a mental disorder and is detained in hospital under any of the provisions described in subsection (2) of section 7, the lead authority will be the State hospital or appropriate NHS authority.
45. This section also provides for a local authority to be the lead authority where the lead authority is not the Scottish Ministers or a hospital. In practice, the local authority will become the lead authority when the offender has been released from detention or imprisonment. Arrangements for transferring the lead from one authority to another, for example when an offender is released from detention or imprisonment are dealt with in section 9.
46. [Section 8](#) sets out the preparation process for the RMP. The initial RMP is to be prepared within 9 months of the offender being sentenced or detained in hospital, although the RMA can grant a reasonable extension where an appeal under subsection (7) is pending. The lead authority is to consult any person or authority upon which it is considering conferring functions in relation to the implementation of the RMP and any other appropriate person. Those consulted are under a duty to comply with reasonable requests.
47. This section also requires the lead authority to submit the RMP to the RMA for approval. The RMA may either approve the plan or reject it if it does not comply with the minimum standards set out in section 6(3) or any other guidelines and standards which the RMA have prepared. If, in rejecting the RMP, the RMA considers that the lead authority has disregarded minimum standards or any relevant guideline, standard or requirement produced by the RMA in relation to the preparation of RMPs, the RMA can give reasonable directions to the lead authority or any person named in the plan concerning the preparation of a revised plan. Those receiving such a direction are obliged to comply with any reasonable direction. Those receiving such a direction may appeal to the sheriff against such a direction on the grounds that it is unreasonable.
48. [Section 9](#) provides for the procedures for the implementation and review of RMPs. The lead authority and any other person having functions under the risk management plan are required to implement their respective responsibilities. If the RMA considers that the lead authority or other persons with duties under the plan are failing, without reasonable excuse, to implement the plan in accordance with those functions, the Authority may give directions to the lead authority or person concerned as to the implementation of the plan. The lead authority or relevant person is under a duty to comply with such a direction. Those receiving such a direction may appeal to the sheriff against such a direction on the grounds that it is unreasonable. The lead authority must report to the RMA annually on the implementation.
49. The section also provides a review process to be activated where there is likely to be a significant change in the offender's circumstances, for example, where the offender may be considered by the Parole Board for release on licence. Where a change is considered, the lead authority must review the RMP. If after review the lead authority considers that the current RMP is no longer suitable or is likely to become unsuitable then that authority must prepare a revised RMP and submit it to the RMA for approval within a period which the RMA may reasonably require. Where, following a review, the lead authority considers that it is no longer appropriate for it to continue as "lead" (for example where an offender is being released on licence), the responsibility will pass to a different lead authority as prescribed under section 7 and the new lead authority must prepare a revised RMP and have it approved by the RMA. The RMA's power to

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reject a RMP on the grounds that it does not meet agreed standards and issue directions
apply equally to revised RMPs.