



Criminal Justice (Scotland) Act 2003

2003 asp 7

PART 1

PROTECTION OF THE PUBLIC AT LARGE

Risk assessment and order for lifelong restriction

1 Risk assessment and order for lifelong restriction

- (1) In Part XI of the 1995 Act (sentencing), after section 210AA (which is inserted into that Act by section 20 of this Act) there is inserted—

“Risk assessment

210B Risk assessment order

- (1) This subsection applies where it falls to the High Court to impose sentence on a person convicted of an offence other than murder and that offence—
- (a) is (any or all)—
 - (i) a sexual offence (as defined in section 210A(10) of this Act);
 - (ii) a violent offence (as so defined);
 - (iii) an offence which endangers life; or
 - (b) is an offence the nature of which, or circumstances of the commission of which, are such that it appears to the court that the person has a propensity to commit any such offence as is mentioned in subparagraphs (i) to (iii) of paragraph (a) above.
- (2) Where subsection (1) above applies, the court, at its own instance or (provided that the prosecutor has given the person notice of his intention in that regard) on the motion of the prosecutor, if it considers that the risk criteria may be met, shall make an order under this subsection (a “risk assessment order”) unless—
- (a) the court makes an interim hospital order by virtue of section 210D(1) of this Act in respect of the person; or
 - (b) the person is subject to an order for lifelong restriction previously imposed.

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- (3) A risk assessment order is an order—
- (a) for the convicted person to be taken to a place specified in the order, so that there may be prepared there—
 - (i) by a person accredited for the purposes of this section by the Risk Management Authority; and
 - (ii) in such manner as may be so accredited,
 - a risk assessment report (that is to say, a report as to what risk his being at liberty presents to the safety of the public at large); and
 - (b) providing for him to be remanded in custody there for so long as is necessary for those purposes and thereafter there or elsewhere until such time as is fixed for sentence.
- (4) On making a risk assessment order, the court shall adjourn the case for a period not exceeding ninety days.
- (5) The court may on one occasion, on cause shown, extend the period mentioned in subsection (4) above by not more than ninety days; and it may exceptionally, where by reason of circumstances outwith the control of the person to whom it falls to prepare the risk assessment report (the “assessor”), or as the case may be of any person instructed under section 210C(5) of this Act to prepare such a report, the report in question has not been completed, grant such further extension as appears to it to be appropriate.
- (6) There shall be no appeal against a risk assessment order or against any refusal to make such an order.

210C Risk assessment report

- (1) The assessor may, in preparing the risk assessment report, take into account not only any previous conviction of the convicted person but also any allegation that the person has engaged in criminal behaviour (whether or not that behaviour resulted in prosecution and acquittal).
- (2) Where the assessor, in preparing the risk assessment report, takes into account any allegation that the person has engaged in criminal behaviour, the report is to—
- (a) list each such allegation;
 - (b) set out any additional evidence which supports the allegation; and
 - (c) explain the extent to which the allegation and evidence has influenced the opinion included in the report under subsection (3) below.
- (3) The assessor shall include in the risk assessment report his opinion as to whether the risk mentioned in section 210B(3)(a) of this Act is, having regard to such standards and guidelines as are issued by the Risk Management Authority in that regard, high, medium or low.
- (4) The assessor shall submit the risk assessment report to the High Court by sending it, together with such documents as are available to the assessor and are referred to in the report, to the Principal Clerk of Justiciary, who shall then send a copy of the report and of those documents to the prosecutor and to the convicted person.

- (5) The convicted person may, during the period of his detention at the place specified in the risk assessment order, himself instruct the preparation (by a person other than the assessor) of a risk assessment report; and if such a report is so prepared then the person who prepares it shall submit it to the court by sending it, together with such documents as are available to him (after any requirement under subsection (4) above is met) and are referred to in the report, to the Principal Clerk of Justiciary, who shall then send a copy of it and of those documents to the prosecutor.
- (6) When the court receives the risk assessment report submitted by the assessor a diet shall be fixed for the convicted person to be brought before it for sentence.
- (7) If, within such period after receiving a copy of that report as may be prescribed by Act of Adjournal, the convicted person intimates, in such form, or as nearly as may be in such form, as may be so prescribed—
 - (a) that he objects to the content or findings of that report; and
 - (b) what the grounds of his objection are,the prosecutor and he shall be entitled to produce and examine witnesses with regard to—
 - (i) that content or those findings; and
 - (ii) the content or findings of any risk assessment report instructed by the person and duly submitted under subsection (5) above.

210D Interim hospital order and assessment of risk

- (1) Where subsection (1) of section 210B of this Act applies, the High Court, if—
 - (a) it may make an interim hospital order in respect of the person under section 53 of this Act; and
 - (b) it considers that the risk criteria may be met,shall make such an order unless the person is subject to an order for lifelong restriction previously imposed.
- (2) Where an interim hospital order is made by virtue of subsection (1) above, a report as to the risk the convicted person's being at liberty presents to the safety of the public at large shall be prepared by a person accredited for the purposes of this section by the Risk Management Authority and in such manner as may be so accredited.
- (3) Section 210C(1) to (4) and (7) (except paragraph (ii)) of this Act shall apply in respect of any such report as it does in respect of a risk assessment report.

210E The risk criteria

For the purposes of sections 195(1), 210B(2), 210D(1) and 210F(1) and (3) of this Act, the risk criteria are that the nature of, or the circumstances of the commission of, the offence of which the convicted person has been found guilty either in themselves or as part of a pattern of behaviour are such as to demonstrate that there is a likelihood that he, if at liberty, will seriously endanger the lives, or physical or psychological well-being, of members of the public at large.

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Order for lifelong restriction etc.

210F Order for lifelong restriction

- (1) The High Court, at its own instance or on the motion of the prosecutor, if it is satisfied, having regard to—
 - (a) a risk assessment report submitted under section 210C(4) or (5) of this Act;
 - (b) any report submitted by virtue of section 210D of this Act;
 - (c) any evidence given under section 210C(7) of this Act; and
 - (d) any other information before it,that, on a balance of probabilities, the risk criteria are met, shall make an order for lifelong restriction in respect of the convicted person.
- (2) An order for lifelong restriction constitutes a sentence of imprisonment, or as the case may be detention, for an indeterminate period.
- (3) The prosecutor may, on the grounds that on a balance of probabilities the risk criteria are met, appeal against any refusal of the court to make an order for lifelong restriction.

210G Disposal of case where certain orders not made

- (1) Where, in respect of a convicted person—
 - (a) a risk assessment order is not made under section 210B(2) of this Act, or (as the case may be) an interim hospital order is not made by virtue of section 210D(1) of this Act, because the court does not consider that the risk criteria may be met; or
 - (b) the court considers that the risk criteria may be met but a risk assessment order, or (as the case may be) an interim hospital order, is not so made because the person is subject to an order for lifelong restriction previously imposed,the court shall dispose of the case as it considers appropriate.
- (2) Where, in respect of a convicted person, an order for lifelong restriction is not made under section 210F of this Act because the court is not satisfied (in accordance with subsection (1) of that section) that the risk criteria are met, the court, in disposing of the case, shall not impose on the person a sentence of imprisonment for life, detention for life or detention without limit of time.

Report of judge

210H Report of judge

- (1) This subsection applies where a person falls to be sentenced—
 - (a) in the High Court for an offence (other than murder) mentioned in section 210B(1) of this Act; or
 - (b) in the sheriff court for such an offence prosecuted on indictment.

- (2) Where subsection (1) above applies, the court shall, as soon as reasonably practicable, prepare a report in writing, in such form as may be prescribed by Act of Adjournal—
- (a) as to the circumstances of the case; and
 - (b) containing such other information as it considers appropriate,
- but no such report shall be prepared if a report is required to be prepared under section 21(4) of the Criminal Justice (Scotland) Act 2003 (asp 7).”.
- (2) Schedule 1, which contains amendments consequential upon the provisions of subsection (1), has effect.

Disposal in case of insanity

2 Disposal of case where accused found to be insane

In section 57 (disposal of case where accused found to be insane) of the 1995 Act—

- (a) in subsection (2) after paragraph (b) there is inserted—
“(bb) make an interim hospital order;”; and
- (b) for subsection (3) there is substituted—
“(3) Where the court is satisfied, having regard to a report submitted in respect of the person following an interim hospital order, that, on a balance of probabilities, the risk his being at liberty presents to the safety of the public at large is high, it shall make orders under both paragraphs (a) and (b) of subsection (2) above in respect of that person.”.

The Risk Management Authority

3 The Risk Management Authority

- (1) There is established an authority (to be known as the “Risk Management Authority”) whose functions under this Act and any other enactment are to be exercised for the purpose of ensuring the effective assessment and minimisation of risk.
- (2) For the purposes of subsection (1) and sections 4 to 6, “risk” means, as regards—
- (a) a person convicted of an offence; or
 - (b) a person who is subject to a disposal under section 57 (disposal of case where accused found to be insane) of the 1995 Act,
- the risk the person’s being at liberty presents to the safety of the public at large.
- (3) Schedule 2 has effect with respect to the Authority.

4 Policy and research

In, or as the case may be in relation to, the assessment and minimisation of risk—

- (a) the Risk Management Authority is to—
 - (i) compile and keep under review information about the provision of services in Scotland;
 - (ii) compile and keep under review research and development;

- (iii) promote effective practice; and
 - (iv) give such advice and make such recommendations to the Scottish Ministers as it considers appropriate; and
- (b) the Authority may—
 - (i) carry out, commission or co-ordinate research and publish the results of such research; and
 - (ii) undertake pilot schemes for the purposes of developing and improving methods.

5 Guidelines and standards

- (1) The Risk Management Authority is to—
 - (a) prepare and issue guidelines as to the assessment and minimisation of risk; and
 - (b) set and publish standards according to which measures taken in respect of the assessment and minimisation of risk are to be judged.
- (2) Any person having functions in relation to the assessment and minimisation of risk is to have regard to such guidelines and standards in the exercise of those functions.

6 Risk management plans

- (1) A plan (a “risk management plan”) must be prepared in respect of—
 - (a) any offender who is subject to an order for lifelong restriction made under section 210F (order for lifelong restriction) of the 1995 Act; and
 - (b) any offender falling within such other category as may be prescribed.
- (2) Before making an order by virtue of subsection (1)(b), the Scottish Ministers are to consult—
 - (a) the Risk Management Authority; and
 - (b) such other persons as they consider appropriate.
- (3) The risk management plan must—
 - (a) set out an assessment of risk;
 - (b) set out the measures to be taken for the minimisation of risk, and how such measures are to be co-ordinated; and
 - (c) be in such form as is specified under subsection (5).
- (4) The risk management plan may provide for any person who may reasonably be expected to assist in the minimisation of risk to have functions in relation to the implementation of the plan.
- (5) The Risk Management Authority is to specify and publish the form of risk management plans.
- (6) The Risk Management Authority may issue guidance (either generally or in a particular case) as to the preparation, implementation or review of any risk management plan.

7 Preparation of risk management plans

- (1) Where the offender is serving a sentence—
 - (a) of imprisonment in a prison;

- (b) of detention in a young offenders institution; or
- (c) by virtue of section 208 (detention of children convicted on indictment) of the 1995 Act, of detention in some other place,

the risk management plan is to be prepared by the Scottish Ministers.

- (2) Where the offender is detained (or liable to be detained) in a hospital by virtue of—
- (a) a hospital order under section 58 (order for hospital admission or guardianship) of the 1995 Act;
 - (b) a hospital direction under section 59A (hospital directions) of the 1995 Act;
 - (c) an application for admission under Part V (admission to hospital etc.) of the Mental Health (Scotland) Act 1984 (c. 36) (“the 1984 Act”); or
 - (d) a transfer direction under section 71 (removal to hospital of prisoners) of the 1984 Act,

the risk management plan is to be prepared by the managers of the hospital in which the offender is detained (or liable to be detained).

- (3) Where the risk management plan does not require to be prepared by the Scottish Ministers or the managers of a hospital under subsections (1) and (2), the plan is to be prepared by the local authority in whose area the offender resides.
- (4) In this section, the expressions “managers of a hospital” and “hospital” are to be construed in accordance with section 125 (interpretation) of the 1984 Act.
- (5) Whoever is required by virtue of this section to prepare the risk management plan is referred to in sections 8 and 9 as the “lead authority”.

8 Preparation of risk management plans: further provision

- (1) Preparation of the risk management plan is to be completed no later than 9 months after the offender is sentenced or detained (or becomes liable to be detained) in hospital; but if there is an appeal under subsection (7), it may be completed within such longer period as the Risk Management Authority may reasonably require.
- (2) In preparing the risk management plan, the lead authority is to consult—
- (a) any person on whom, by virtue of section 6(4), the lead authority is considering conferring functions; and
 - (b) such other persons as it considers appropriate.
- (3) Any person so consulted is to provide such assistance to the lead authority as it may reasonably require for the purposes of preparing the plan.
- (4) The lead authority is to submit the risk management plan to the Risk Management Authority and the Risk Management Authority is to—
- (a) approve it; or
 - (b) where it considers that a plan does not comply with section 6(3) or that the lead authority has, in preparing the plan, disregarded any guideline or standard under section 5 or any guidance under section 6(6), reject it.
- (5) Where any plan is rejected, the lead authority is to prepare a revised plan and submit it to the Risk Management Authority by such time as the Authority may reasonably require.
- (6) Where the Risk Management Authority—

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- (a) rejects a revised plan; and
- (b) considers that, unless it exercises its power under this subsection to give directions, subsection (1) would not be complied with,

the Authority may give directions to the lead authority and any other person having functions under the plan as to the preparation of a revised plan; and the lead authority and such other person must, subject to subsection (7), comply with any such direction.

- (7) The lead authority or any other person to whom any direction is given under subsection (6) may appeal to the sheriff against the direction on the grounds that it is unreasonable.

9 Implementation and review of risk management plans

- (1) The lead authority and any other person having functions under the risk management plan are to implement the plan in accordance with their respective functions.
- (2) Where the Risk Management Authority considers that the lead authority or any such other person is failing, without reasonable excuse, to implement the plan in accordance with those functions, the Authority may give directions to the lead authority or, as the case may be, the person as to the implementation of the plan; and the lead authority and the person must, subject to subsection (3), comply with any such direction.
- (3) The lead authority or any other person to whom any direction is given under subsection (2) may appeal to the sheriff against the direction on the grounds that it is unreasonable.
- (4) The lead authority is to report annually to the Risk Management Authority as to the implementation of the plan.
- (5) Where there has been, or there is likely to be, a significant change in the circumstances of the offender, the lead authority is to review the plan.
- (6) Where a review has been carried out under subsection (5), and the lead authority considers that the plan for the time being in force is, or is likely to become, unsuitable, either—
 - (a) the lead authority is to prepare an amended plan; or
 - (b) if it is not appropriate for it to continue as lead authority, a different lead authority (determined in accordance with section 7) is to prepare an amended plan,
 within such period as the Risk Management Authority may reasonably require.
- (7) Sections 6(3) and (4), 8(2) to (7) and this section apply to the preparation of an amended plan under subsection (6) as they do to the preparation of a plan under sections 6 to 8 but as if, in subsection (6)(b) of section 8, the reference to subsection (1) of that section were a reference to subsection (6).

10 Grants to local authorities in connection with risk management plans

- (1) The Scottish Ministers may make to any local authority grants of such amount, and subject to such conditions, as they may determine in respect of expenditure incurred by the authority in preparing and implementing any risk management plan.
- (2) Before making any such grant, the Scottish Ministers must consult such local authorities and such other persons as they consider appropriate.

11 Accreditation, education and training

- (1) The Scottish Ministers may by order make a scheme of accreditation as to—
 - (a) any manner of assessing and minimising risk (being accreditation in recognition of the effectiveness of any methods and practices which may be employed in the assessment and minimisation of risk); and
 - (b) persons having functions in relation to the assessment and minimisation of risk (being accreditation in recognition of education or training received, or of any expertise relevant to those functions otherwise held or acquired, by them).
- (2) The Risk Management Authority—
 - (a) is to administer any scheme of accreditation made under subsection (1) (including awarding, generally or for any particular purpose, suspending or withdrawing accreditation where it considers that to be appropriate); and
 - (b) may provide, or secure the provision of, education and training in relation to the assessment and minimisation of risk for any person having functions in that regard.

12 Functions: supplementary

- (1) The Risk Management Authority may, subject to subsection (3), do anything it considers necessary or expedient for the purpose of or in connection with the exercise of its functions.
- (2) In particular, the Authority may—
 - (a) acquire and dispose of land;
 - (b) enter into contracts;
 - (c) charge for goods and services;
 - (d) with the consent of the Scottish Ministers, invest and borrow money.
- (3) The Scottish Ministers may for the purpose of or in connection with the exercise of the Risk Management Authority's functions give directions to the Authority; and the Authority is to comply with any such direction.

13 Accounts and annual reports

- (1) The Risk Management Authority is to—
 - (a) keep proper accounts and accounting records;
 - (b) prepare for each financial year (the financial year being the period of 12 months ending with 31st March) an account of its expenditure and receipts; and
 - (c) send the account to the Scottish Ministers,and the Scottish Ministers are to send the account to the Auditor General for Scotland for auditing.
- (2) The Authority is, as soon as practicable after the end of each financial year, to prepare a report on its activities during that year and send a copy of the report to the Scottish Ministers.
- (3) The Scottish Ministers are to lay a copy of the report before the Parliament and publish the report.