

MANAGEMENT OF OFFENDERS ETC. (SCOTLAND) ACT 2005

EXPLANATORY NOTES

INTRODUCTION

Integrated Management Of Offenders

Section 10 – Arrangements for Assessing and managing risks posed by certain offenders

75. Subsection (1) requires the responsible authorities, in the area of a local authority, to establish joint arrangements for the assessment and management of risks posed by certain offenders as defined in that subsection. The categories of offender covered by this section are those subject to the sex offender notification requirements under Part 2 of the Sexual Offences Act 2003, those convicted on indictment of an offence inferring personal violence who are subject to a probation order, or who are or will be on release from prison, subject to supervision in the community, and those considered by virtue of their conviction to pose a continuing risk to the public. The arrangements also apply to individuals acquitted on grounds of insanity or found to be insane following proceedings taken on indictment. The provisions of subsection (11) identify the categories for whom the Health service is a responsible authority, namely those acquitted in proceedings on indictment on the grounds of insanity and subject to a restriction order and those for whom a plea, in bar of trial on grounds of insanity, is successfully made, who are subject to any of the orders or directions specified in that subsection.
76. Subsection (2) clarifies that it is immaterial where the offences are committed for the purpose of identifying which authorities are to be responsible for making the relevant arrangements. The test for establishing such responsibility is whether the person poses a risk in the local authority area.
77. Subsection (3) gives Scottish Ministers the power to make an order, by statutory instrument, requiring other agencies to cooperate with the responsible authorities in establishing and implementing the arrangements for the relevant group of offenders.
78. Subsection (4) of the Act imposes a duty on any persons specified in the Order made under subsection (3) to cooperate. The responsible authorities also have a duty to cooperate with one another.
79. In addition, subsection (5) provides that the responsible authorities and the persons specified under subsection (3) must draw up a Memorandum setting out the ways in which they are to cooperate with each other. The purpose of this requirement is to enable the practicalities of co-operation, including the sharing of information, to be determined according to what suits local circumstances. The Memorandum will make clear the purpose of the duty, the principles upon which cooperation will take place, the activities involved in co-operating and the systems and procedures which support them and the partners to the agreement.

*These notes relate to the Management of Offenders etc. (Scotland)
Act 2005 (asp 14) which received Royal Assent on 8 December 2005*

80. Subsection (6) allows Scottish Ministers to issue guidance to responsible authorities on the discharge of the functions conferred upon them.
81. Subsection (7) defines the responsible authorities in sections 10 and 11 for the area of a local authority namely the police, the local authority, Health Boards or Special Health Boards (for the purposes specified in subsection (11) only) and Scottish Ministers. In practice by virtue of subsection (14) the responsibilities of Scottish Ministers apply to the functions exercised on their behalf by the Scottish Prison Service.
82. Subsection (8) enables Scottish Ministers to amend by statutory instrument the definition of “responsible authorities” in subsection (7).
83. Subsection (9) provides that the Scottish Statutory Instrument (SSI) made under subsection (3) is made under negative procedure and the SSI made under subsection (8) is made under affirmative procedure.
84. Subsection (10) enables Scottish Ministers to make different provision in the order made under subsection (3) for different purposes and for different areas.
85. Subsection (11) provides that Health Boards are responsible authorities only as regards those persons who are subject to any of the orders or directions specified in this subsection. They will also require to fall into the categories specified in subsection (1).
86. However, subsection (12) also provides that Health Boards have a duty to co-operate with the other responsible authorities and with each other and with any persons specified in an order made under subsection (3) in respect of those offenders who are **not** “mentally disordered”, that is covered by the provisions of subsection (11), but fall into the categories specified in subsection (1).
87. Subsection (13) defines Health Boards and Special Health Boards
88. Subsection (14) provides that the reference to Scottish Ministers in sections 10 and 11 is to Scottish Ministers exercising their functions under the Prisons (Scotland) Act 1989, in practice exercising their functions through the Scottish Prison Service.