

MANAGEMENT OF OFFENDERS ETC. (SCOTLAND) ACT 2005

EXPLANATORY NOTES

INTRODUCTION

Integrated Management Of Offenders

Section 19 – Objection to content or finding of risk assessment report: conduct of proceedings

130. The Criminal Justice (Scotland) Act 2003 establishes the Order for Lifelong Restriction (OLR) as a new High Court disposal for high risk sexual and violent offenders. Before an OLR can be imposed, the court first makes a Risk Assessment Order under which a risk assessment is prepared by an assessor accredited by the Risk Management Authority. The offender may also instruct his own risk assessment, and has the opportunity to challenge the report prepared for the court. The procedure for objections to reports is contained in section 210C(7) of the Criminal Procedure (Scotland) Act 1995, and both the offender and prosecutor may cite witnesses. In practice, we expect that the witnesses called to give evidence in these proceedings will normally be the authors of the risk assessment reports themselves, but it is possible that witnesses to the offences referred to in the reports may be called.
131. The Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 and the Vulnerable Witnesses (Scotland) Act 2004 provide a range of measures designed to protect the complainer in sexual offence cases and vulnerable witnesses, including prohibitions on the accused conducting his own defence, restrictions on evidence relating to the complainer in sexual offence cases, and special measures such as television links, evidence on commission, use of screens etc. However these special protections apply only to the trial itself and to proceedings on victim statements. As things stand, they would not apply to the court proceedings under section 210C(7) dealing with objections to the content of risk assessments. There is therefore a risk, for example, that an offender could use these proceedings to try to cross-examine a vulnerable witness, even though he may have been prevented from doing this during the trial itself.
132. **Section 19** inserts a new section 210EA into the Criminal Procedure (Scotland) Act 1995. This new section applies sections 271 to 271M, 274 to 275C and 288C to 288F of that Act so that the protections they provide in court proceedings will also apply to proceedings under section 210C(7). Subsection (4) ensures that where these protections were available during the trial for a particular witness, they will continue to apply during the later proceedings. Subsection (3) takes account of the fact that the risk assessments may include information about offences other than the one which gave rise to the trial, for example if the offender has a history of sexual offending, and ensures that the protections apply to these witnesses by extending the definitions of “accused”, “alleged” offence and “complainer” appropriately. Subsection (2) provides that, for the purposes of calculating the ages of witnesses in determining whether certain special measures apply, their age at the date of commencement of proceedings in the original trial is to be used.