

MANAGEMENT OF OFFENDERS ETC. (SCOTLAND) ACT 2005

EXPLANATORY NOTES

INTRODUCTION

Integrated Management Of Offenders

Section 6 – Power of Scottish Ministers to require action by community justice authority: failure by that authority

51. This section enables Scottish Ministers to intervene should a community justice authority fail to adequately exercise its functions and duties. The model followed is similar to that recently accepted by the Parliament in the School Education (Ministerial Powers and Independent Schools) (Scotland) Act 2004 and allows for a staged and proportional approach to intervention.
52. Subsection (1)(a) provides the trigger mechanism for Scottish Ministers to exercise their powers. Powers are triggered where a failure of the community justice authority is reported to Scottish Ministers by a person mentioned in subsection (2).
53. Subsection (1)(b) applies the procedure laid down in section 6 only to cases where Scottish Ministers would in due course be justified in issuing an enforcement direction. The procedure would not therefore be used in trivial cases.
54. Subsection (2) identifies those bodies who may report to Scottish Ministers on the failure of the community justice authority.
55. Subsection (3) explains that a preliminary notice is one which informs the community justice authority of the apparent failures and requires a written response to the notice within a given time period. Subsection (4) establishes that the written response can state that the community justice authority is not so failing (or so failed) in carrying out its functions, giving reasons supporting that statement. Alternatively the written response may acknowledge the failure and provide reasons why an enforcement direction should not be issued to them. Subsection (5) obliges a community justice authority to explain in the written response to a preliminary notice what remedial measures it has taken or will take to address failures, or the reasons why no remedial action is necessary. Thus a community justice authority has by statute an opportunity to refute or remedy failures before an enforcement direction is issued.
56. Where the period for submission of a written response in subsection (2) has elapsed and it still appears to Scottish Ministers that the community justice authority is failing or has failed to exercise its duties and believes the issue of an enforcement direction is justified, Scottish Ministers may so do under subsection (6). This wording enables Scottish Ministers to intervene when either a written response has not been submitted in the required time, or the written response does not adequately address the identified failures. There is a statutory obligation on the community justice authority to comply with an enforcement direction in terms of subsection (8).

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

57. Subsections (9) and (10) respectively allow Scottish Ministers to revoke or alter an enforcement direction and issue recommendations to the community justice authority as well as or instead of an enforcement direction. The flexibility of these provisions allows Scottish Ministers to adjust the nature of their direction to take into account changes in circumstances which might make previous directions no longer relevant.
58. Subsection (11) requires Scottish Ministers to prepare and lay a report before the Parliament when Scottish Ministers make use of the power to issue, vary or revoke an enforcement direction. This provision thus builds in Parliamentary scrutiny of decisions by Scottish Ministers to issue enforcement directions.