



Criminal Justice (Scotland) Act 2003

2003 asp 7

PART 1

PROTECTION OF THE PUBLIC AT LARGE

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 [F1 not criminally responsible or unfit for trial]) 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.

Textual Amendments

- F1** Words in s. 3(2)(b) substituted (with application in accordance with art. 3 of the commencing S.S.I.) by *Criminal Justice and Licensing (Scotland) Act 2010 (asp 13)*, s. 206(1), **sch. 7 para. 71**; S.S.I. 2012/160, art. 3, sch.

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

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- (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

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- (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 ^{F2} . . . in a hospital by virtue of—
- (a) a [^{F3}compulsion order under section 57A (compulsion order)] of the 1995 Act;
 - (b) a hospital direction under section 59A (hospital directions) of the 1995 Act;
 - ^{F4}(c) Part 5 (emergency detention), 6 (short term detention) or 7 (compulsory treatment orders) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) (“the 2003 Act”);
 - (d) a transfer [^{F5}for treatment direction under section 136 of the 2003 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 [^{F6}section 329 (interpretation) of the 2003 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”.

Textual Amendments

- F2** Words in s. 7(2) repealed (27.9.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005 (S.S.I. 2005/465), arts. 1, 3, **Sch. 2**
- F3** Words in s. 7(2)(a) substituted (27.9.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005 (S.S.I. 2005/465), arts. 1, 2, **Sch. 1 para. 34(3)(a)(i)**
- F4** S. 7(2)(c) substituted (27.9.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005 (S.S.I. 2005/465), arts. 1, 2, **Sch. 1 para. 34(3)(a)(ii)**
- F5** Words in s. 7(2)(d) substituted (27.9.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005 (S.S.I. 2005/465), arts. 1, 2, **Sch. 1 para. 34(3)(a)(iii)**
- F6** Words in s. 7(4) substituted (27.9.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005 (S.S.I. 2005/465), arts. 1, 2, **Sch. 1 para. 34(3)(b)**

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.

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- (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—
 - (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.

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- (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).

[^{F7}(1A) The order may authorise—

- (a) decisions as to cases arising in relation to a scheme of accreditation to be taken by a committee; and
- (b) any appeal as to such a decision to be determined by a committee,

in accordance with such procedure as may be prescribed; and without prejudice to the generality of this subsection the order may make provision as to the membership of the committees and as to any quorum.]

- (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.

Textual Amendments

F7 S. 11(1A) inserted (8.12.2005) by [Management of Offenders etc. \(Scotland\) Act 2005 \(asp 14\)](#), ss. 13(2), 24

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.

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- (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.

Commencement Information

II S. 13 in force at 1.1.2004 by S.S.I. 2003/475, art. 2, Sch. (subject to S.S.I. 2003/438, art. 2)

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