

EXECUTIVE NOTE

THE RISK ASSESSMENT AND MINIMISATION (ACCREDITATION SCHEME) (SCOTLAND) ORDER 2006 SSI 2006/draft

1. This Order is made in exercise of the powers conferred by sections 11(1) and (1A) of the Criminal Justice (Scotland) Act 2003 (“the 2003 Act”). Section 11(1A) was added to the 2003 Act by section 13(2) of the Management of Offenders etc. (Scotland) Act 2005. The instrument is subject to draft affirmative resolution procedure.

2. It sets out an Accreditation Scheme for accrediting both persons involved in the assessment and minimisation of the risk posed by offenders to the safety of the public, and the “manners” of assessing and minimising risk that they use. This Scheme is to be administered by the Risk Management Authority (“the RMA”), with particular roles given to the Authority’s accreditation and appeals committees.

Policy Objectives

3. Part 1 of the 2003 Act deals with the assessment, sentencing and management of serious violent and sexual offenders. It introduces a new life sentence of an Order for Lifelong Restriction (OLR), prescribes the procedure for assessing whether an offender meets the criteria for the new sentence, establishes the RMA and sets out its functions as respects risk assessment and risk minimisation.

4. An important part of the new system is that the risk assessments under sections 210B and 210D of the Criminal Procedure (Scotland) Act 1995 that the High Court will rely on when deciding whether to make an OLR should be prepared by a person accredited by the RMA and in a manner accredited by the RMA. The Accreditation Scheme in this Order sets out the accreditation process for both persons and manners. While sections 210B and 210D currently specify the only statutory requirements for accreditation, the Scheme is not limited to this. It allows for accreditation of persons and manners of risk assessment and minimisation for any purpose. The Scheme will therefore be able to accommodate future statutory or non-statutory requirements for accreditation. For example, in setting guidance for the preparation and implementation of risk management plans under section 6 of the 2003 Act, the RMA may require the involvement of assessors accredited for that purpose, or the use of accredited risk minimisation methods.

The Scheme

5. The Order itself has three main sections, dealing with applications for accreditation, the removal of accreditation, and appeals against decisions on accreditation or removal. The Order also contains provisions about complains and about the maintenance of a register of accredited persons and manners. The provisions of the Order are self-contained and largely self-explanatory.

Accreditation

6. All decisions on accreditation of either persons or manners are to be on the basis of an application to the RMA. Articles 3 to 5 provide for applications to be made to the RMA together with appropriate supporting evidence, and for these to be considered by the RMA's Accreditation Committee, which the RMA is required to establish under the Scheme. The Committee¹ will decide whether to award accreditation. The RMA is consulting on the accreditation process that it will use, consistent with the Scheme. That consultation also covers the competencies expected of risk assessors and sets out the evidence that applicants will have to submit to the RMA.

7. Accreditation will be valid for a period of up to 3 years, and may be subject to conditions and be for specific purposes. For example, the committee may decide that continued membership of a professional body is to be a condition of accreditation, and may decide that the accreditation be restricted to work with particular groups of offenders. The Scheme also allows accreditation to be renewed during the course of an existing period of accreditation. Successful applicants will be added to the register (see paragraph 12 below).

Termination, Withdrawal and Suspension

8. Articles 6 to 8 deal with the termination, withdrawal and suspension of accreditation. In particular article 7 allows the RMA to withdraw accreditation either in respect of a person or a manner of risk assessment or minimisation. Withdrawal would generally be a result of failure to comply with conditions of accreditation, or following investigation of a complaint (see paragraph 11 below). Where a person ceases to hold a professional membership or registration that is a condition of accreditation, withdrawal of accreditation is automatic. Otherwise, the applicant is given an opportunity to present his or her case to the accreditation committee. The process is set out in detail to help ensure fairness.

9. Article 8 provides for temporary suspension of accreditation. This may occur when a person's professional membership or registration is suspended, or pending the outcome of withdrawal proceedings under article 7.

Appeals

10. Articles 9 to 15 deal, at length, with the process for appeals against decisions by the accreditation committee, in relation to either the award or withdrawal of accreditation. To ensure fairness, appeals are handled by an appeals committee that is entirely distinct from the accreditation committee. The Scheme sets time limits for the process to ensure that appeals are dealt with speedily. It also provides that the appeals committee may call on the assistance of a legal assessor.

Other provisions

11. Article 16 provides a mechanism for complaints relating to an accredited person or manner of assessing risk to be made to, and dealt with by, the RMA. The accreditation committee is required to consider complaints and determine what action to take. This would allow complaints about poor quality risk assessments to be considered by the committee,

¹ Strictly speaking, the Order does not require the RMA to delegate these functions to the Accreditation Committee. However in practice this is what the RMA intends to do.

which might in turn lead to the instigation of proceedings for withdrawal of accreditation. Similarly, a complaint that a manner of risk assessment was no longer appropriate for use in the light of new research evidence could lead to withdrawal of its accreditation. It should be noted that this provisions does not deal with complaints about the accreditation process itself, which would be dealt with through the RMA's complaints process or the Scottish Public Services Ombudsman.

12. Article 17 requires the RMA to maintain a register of current accreditations and to publish it on its website. The register will be the main source of information on accredited persons and manners of assessing/minimising risk, and would be used by the courts in appointing risk assessors.

Consultation

13. The Accreditation Scheme contained in this draft Order has been developed in close collaboration with the RMA. As noted above, the Authority is consulting on the application process, criteria and methods of evaluation that will put the flesh on the bones of the Scheme (details at www.rmascotland.gov.uk).

Financial Effects

14. The instrument has no financial effects on local government or on business. The costs of administering the Scheme will be met by the Risk Management Authority from the Scottish Executive's grant-in-aid.

Scottish Executive Justice Department
February 2006