Management of Offenders etc. (Scotland) Act 2005

2005 asp 14

Assessing and managing risks posed by certain offenders

10 Arrangements for assessing and managing risks posed by certain offenders

(1) Subject to subsection (11), the responsible authorities for the area of a local authority must jointly establish arrangements for the assessment and management of the risks posed in that area by any person who—

(a) is subject to the notification requirements of Part 2 of the Sexual Offences Act 2003 (c. 42);

(b) has been convicted on indictment of an offence inferring personal violence and—

[[F1](i) is subject to a community payback order imposed under section 227A of the Criminal Procedure (Scotland) Act 1995 (c.46) imposing an offender supervision requirement (within the meaning given by section 227G(1) of that Act) whether alone or along with any other requirement, or**]**

(ii) is required, having been released from imprisonment or detention, (or will be required when so released), to be under supervision under any enactment or by the terms of an order or licence of the Scottish Ministers or of a condition or requirement imposed in pursuance of an enactment;

(c) has, in proceedings on indictment, been acquitted of an offence inferring personal violence if—

(i) the acquittal is **[**[F2]by reason of the special defence set out in section 51A of that Act of 1995**]**; and

(ii) a restriction order is made in respect of the person under section 59 of that Act of 1995 (hospital orders: restriction on discharge);

(d) has been prosecuted on indictment for such an offence but found, under **[**[F3]section 53F of that Act of 1995 (unfitness for trial) to be unfit for trial;**]**

(e) has been convicted of an offence if, by reason of that conviction, the person is considered by the responsible authorities to be a person who may cause serious harm to the public at large.

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(2) It is immaterial—

(a) for the purposes of paragraph (a) of subsection (1), where the offence by virtue of which the person is subject to the notification requirements was committed (or, if the person is subject to the notification requirements by virtue of a finding under section 80(1)(b) of the Sexual Offences Act 2003 (c. 42), where anything that he was charged with having done took place);

(b) for the purposes of paragraph (b) or (e) of that subsection, where the offence of which the person has been convicted was committed; or

(c) for the purposes of paragraph (c) or (d) of that subsection, where anything that the person was charged with having done took place.

(3) Subject to subsection (11), in the establishment and implementation of those arrangements, the responsible authorities must act in co-operation with such persons as the Scottish Ministers may, by order made by statutory instrument, specify.

(4) Subject to subsection (11), it is the duty of—

(a) any persons specified under subsection (3) to co-operate; and

(b) the responsible authorities to co-operate with each other,

in the establishment and implementation of those arrangements; but only to the extent that such co-operation is compatible with the exercise by those persons and authorities of their functions under any other enactment.

(5) In the area of each local authority the responsible authorities and the persons specified under subsection (3) must together draw up a memorandum setting out the ways in which they are to co-operate with each other.

(6) The Scottish Ministers may issue guidance to responsible authorities on the discharge of the functions conferred on those authorities by this section and section 11.

(7) In this section and in section 11, the "responsible authorities" for the area of a local authority are—

[[F4](a) the chief constable of the Police Service of Scotland;**]**

(b) the local authority;

(c) a Health Board or Special Health Board for an area any part of which is comprised within the area of the local authority; and

(d) the Scottish Ministers.

(8) The Scottish Ministers may by order made by statutory instrument amend the definition of the "responsible authorities" in subsection (7).

(9) A statutory instrument containing an order under—

(a) subsection (3) is subject to annulment in pursuance of a resolution of the Parliament;

(b) subsection (8) is not made unless a draft of the instrument has been laid before, and approved by resolution of, the Parliament.

(10) Different provision may be made under subsection (3) for different purposes and for different areas.

(11) The functions and duties, under the preceding provisions of this section and under section 11, of the responsible authorities mentioned in subsection (7)(c) extend only to the establishment, implementation and review of arrangements for the assessment and management of—

(a) persons subject to an order under section 57(2)(b) of the Criminal Procedure (Scotland) Act 1995 (c. 46) (imposition of special restrictions in disposal of case where accused found **[**[F5]not criminally responsible or unfit for trial **]**);

(b) those subject to a restriction order under section 59 of that Act (provision for restrictions on discharge);

(c) those subject to a hospital direction under section 59A of that Act (direction authorising removal to and detention in specified hospital); or

(d) those subject to a transfer for treatment direction under section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) (transfer of prisoners for treatment for mental disorder).

(12) But it is the duty of the responsible authorities mentioned in subsection (7)(c) to co-operate (to the extent mentioned in subsection (4)) with the other responsible authorities, with each other and with any persons specified under subsection (3), in the establishment and implementation of arrangements for the assessment and management of persons other than those mentioned in paragraphs (a) to (d) of subsection (11).

(13) In subsection (7)(c)—

"Health Board" means a board constituted by order under section 2(1)(a) of the National Health Service (Scotland) Act 1978 (c. 29); and

"Special Health Board" means a board so constituted under section 2(1)(b) of that Act.

(14) The reference in subsection (7)(d) to the Scottish Ministers is to the Scottish Ministers in exercise of their functions under the Prisons (Scotland) Act 1989 (c. 45).

Textual Amendments

F1 S. 10(1)(b)(i) substituted (1.2.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 14(2), 206, **Sch. 2 para. 51(2)**; S.S.I. 2010/413, **art. 2**, Sch. (with art. 3)

F2 Words in s. 10(1)(c)(i) 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. 76(a)(i)**; S.S.I. 2012/160, art. 3, Sch.

F3 Words in s. 10(1)(d) 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. 76(a)(ii)**; S.S.I. 2012/160, art. 3, Sch.

F4 S. 10(7)(a) substituted (1.4.2013) by Police and Fire Reform (Scotland) Act 2012 (asp 8), s. 129(2), **Sch. 7 para. 28**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)

F5 Words in s. 10(11)(a) 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. 76(b)**; S.S.I. 2012/160, art. 3, Sch.

Commencement Information

I1 S. 10 partly in force; s. 10 not in force at Royal Assent, see s. 24; s. 10(3) in force for certain purposes at 1.12.2006 and 2.4.2007 otherwise, and s. 10(1)(a)(2)(a)(4)-(10)(11)(c)(d)(12)-(14) in force at 2.4.2007 by S.S.I. 2006/545, **art. 2**, Sch.; s. 10(1)(c)(2)(c)(11)(a)(b) fully in force and s. 10(1)(d) in force for certain purposes at 30.4.2008 by S.S.I. 2008/149, **art. 2**; s. 10(2)(b) in force for certain purposes at 26.6.2009 by S.S.I. 2009/269, **art. 2**

I2 S. 10(1)(e) in force at 31.3.2016 in so far as not already in force by S.S.I. 2015/429, **art. 2**

I3 S. 10(2)(b) in force at 31.3.2016 for specified purposes by S.S.I. 2015/429, **art. 3**

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11 Review of arrangements

(1) The responsible authorities must keep the arrangements established by them under section 10 under review for the purpose of monitoring the effectiveness of those arrangements and making any changes to them that appear necessary or expedient.

(2) As soon as practicable after the end of each period of 12 months beginning with 1st. April, the responsible authorities must—

(a) jointly prepare a report on the discharge by them during that period of the functions conferred by section 10;

(b) publish the report in the area of the local authority; and

[F6](c) . . . . . .

(3) The report must include—

(a) details of the arrangements established by the responsible authorities; and

(b) information of such description as the Scottish Ministers have notified to the responsible authorities that they wish to be included in the report.

[[F7](4) Publication, for the purposes of subsection (2)(b), must be in such manner as will ensure that the report is likely to come to the attention of the other community justice partners for the area of the local authority.

(5) The reference in subsection (4) to "the other community justice partners for the area of the local authority" is to the persons—

(a) who are community justice partners for the area of the local authority, but

(b) who are not responsible authorities for the area of the local authority.

(6) The reference in subsection (5)(a) to "community justice partners for the area of the local authority" has the same meaning as in the Community Justice (Scotland) Act 2016 (see section 13(2) of that Act).**]**

Textual Amendments

F6 S. 11(2)(c) repealed (31.3.2017) by Community Justice (Scotland) Act 2016 (asp 10), s. 41(2), **sch. 2 para. 5(3)(a)**; S.S.I. 2017/33, reg. 2(1)(2), sch.

F7 S. 11(4)-(6) inserted (31.3.2017) by Community Justice (Scotland) Act 2016 (asp 10), s. 41(2), **sch. 2 para. 5(3)(b)**; S.S.I. 2017/33, reg. 2(1)(2), sch.

Changes to legislation:
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