

Draft Order laid before the Scottish Parliament under section 88(2) of the Criminal Justice (Scotland) Act 2003, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2006 No.

CRIMINAL JUSTICE

**The Risk Assessment and Minimisation
(Accreditation Scheme) (Scotland) Order 2006**

Made - - - - 2006

Coming into force in accordance with article 1

The Scottish Ministers, in exercise of the powers conferred by section 11(1) and (1A) of the Criminal Justice (Scotland) Act 2003⁽¹⁾ and of all other powers enabling them in that behalf, hereby make the following Order:

INTRODUCTION

Citation and commencement

1. This Order may be cited as the Risk Assessment and Minimisation (Accreditation Scheme) (Scotland) Order 2006 and shall come into force on the day after the day on which it is made.

Interpretation

2. In this Order:

“the 2003 Act” means the Criminal Justice (Scotland) Act 2003;

“the accreditation committee” means the committee constituted in accordance with article 4;

“the appeals committee” means the committee constituted in accordance with article 10;

“appellant” means a person to whom article 9(1) applies;

“applicant” means a person to whom article 3(1) applies, and “application” shall be read accordingly;

“the Authority” means the Risk Management Authority, established in accordance with section 3 of the 2003 Act; and

“period of accreditation” means the period specified, in respect of a particular accreditation, in terms of article 5(5)(a).

(1) asp 7; section 11(1A) was inserted by section 13(2) of the [Management of Offenders etc. \(Scotland\) Act 2005](#) (asp 14).

ACCREDITATION

Applications

3.—(1) Subject to paragraph (4), a person seeking—

- (a) accreditation for the purposes of section 11(1)(a) of the 2003 Act of a manner of assessing or minimising risk; or
- (b) to be accredited for the purposes of section 11(1)(b) of the 2003 Act,

shall apply to the Authority in such form and subject to such conditions as it shall specify.

(2) A person to whom paragraph (1)(a) applies shall provide the Authority with evidence of the effectiveness of the manner of assessing or minimising risk.

(3) A person to whom paragraph (1)(b) applies shall provide the Authority with evidence of any relevant education, training or expertise received or held by him or her.

(4) No member of the Authority nor any of its employees may make an application under paragraph (1).

Accreditation committee

4.—(1) The Authority shall constitute an accreditation committee which shall, if authorised to do so by the Authority, take decisions as to—

- (a) the award of accreditation, either generally or for any particular purpose or purposes, following application made under article 3;
- (b) the subsequent withdrawal or suspension of an accreditation under article 7 or 8; and
- (c) the determination of complaints under article 16.

(2) The Authority shall appoint a minimum of two of its members to form the accreditation committee (but it shall not so appoint the convener) and shall appoint one of those members to chair the committee.

(3) The quorum shall be two of the members so appointed, of whom one must be the person appointed to chair the committee, and a decision may be taken by a majority of the members, provided that the person appointed to chair the committee shall, in the event that the votes of the members of the committee are tied, have a second vote.

(4) The validity of any proceedings of the accreditation committee is not affected by the absence of any member appointed under paragraph (2), provided that the number of members present does not fall below two.

(5) Subject to the provisions of this Order and to any measure taken by the Authority under paragraph 4(1)(c)(i) of schedule 2 to the 2003 Act⁽²⁾, the accreditation committee may regulate its own procedure for dealing with any matter before it.

Decisions

5.—(1) Where the Authority does not authorise the accreditation committee for the purposes of article 4(1), references to the accreditation committee in this article and in articles 6, 7, 8 and 15 shall be read as references to the Authority.

(2) The accreditation committee shall decide, within 2 months of receipt of the application, whether to award accreditation, unless it considers that a longer period is required to determine a

(2) Paragraph 4(1) was substituted by section 13(3)(a) of the Management of Offenders etc. (Scotland) Act 2005.

particular application in which case it will, within that 2 month period, notify the applicant of this fact and of the reasons.

(3) The accreditation committee may request that the applicant (or, in the case of a legal person applying under article 3(1)(a), a nominee of the applicant) attend a meeting of the committee and any such request shall be sent no later than 4 weeks after receipt of the application.

(4) The accreditation committee shall not consider an application made during a period of disqualification within the meaning of article 7(9).

(5) A decision to award accreditation—

(a) shall specify the period for which the accreditation will be valid (which period must begin on the date of the decision, or, where a decision is taken during an existing period of accreditation, on the expiry of that existing period, and in any case must last no longer than 3 years);

(b) shall state that the accreditation is for all purposes or shall specify a particular purpose or purposes for which it is valid; and

(c) may include such conditions as the accreditation committee considers appropriate, including conditions (in respect of the accreditation of persons) as to training or the continued membership of, or registration with, a professional regulatory body.

(6) The Authority shall send the applicant written notification of the decision within 2 weeks of it being taken.

TERMINATION, WITHDRAWAL AND SUSPENSION

Termination

6.—(1) An accreditation awarded under article 5 will terminate—

(a) when the period of accreditation has expired;

(b) when the Authority receives written notification that the applicant wishes to surrender the accreditation;

(c) when the accreditation committee withdraws the accreditation under article 7; or

(d) when an accredited person dies.

(2) Where paragraph (1)(b) or (c) applies, the notification or withdrawal may be in respect of any or all of the purposes specified in terms of article 5(5)(b).

(3) Except where the accreditation committee decides otherwise, the termination of an accreditation shall not affect the validity of any work carried out by an accredited person in consequence of that accreditation nor of any work conducted in an accredited manner.

Withdrawal

7.—(1) Where—

(a) an applicant is no longer a member of, or registered with, a professional regulatory body (other than by suspension or other temporary measure) in breach of a condition imposed in terms of article 5(5)(c), or

(b) a condition to similar effect has been so breached,

the accreditation committee shall withdraw the applicant's accreditation.

(2) In any other case, the accreditation committee may decide to withdraw an accreditation and may do so in respect of any, or all, of the purposes for which it was awarded.

(3) The Authority shall notify the applicant in writing of the accreditation committee's intention to consider taking a decision under paragraph (2) and of the reasons for it, and, where practicable, the notification shall also be accompanied by a copy of any relevant material which the committee intends to take into account in reaching its decision.

(4) The applicant may submit written representations, which shall be sent to the Authority within 6 weeks of the date of notification under paragraph (3).

(5) An applicant who wishes to make oral representations, either personally or through a representative, shall send written notice of this to the Authority within 3 weeks of the date of the notification under paragraph (3), specifying, where appropriate, the name, address and occupation of any representative.

(6) The accreditation committee may request the applicant to attend an oral hearing, in which case it shall do so when sending the notification under paragraph (3); and if the applicant wishes to be represented at that hearing then he, she or, as the case may be, it shall send the Authority written notification of the name, address and occupation of the representative within the time limit specified in the preceding paragraph.

(7) Where notification is given in accordance with paragraph (5) or (6), the accreditation committee shall hold an oral hearing.

(8) Following consideration of all representations made by or on behalf of the applicant and of all other relevant material the accreditation committee shall, within 3 months of the date of the notification under paragraph (3), decide whether to withdraw the accreditation, in whole or in part.

(9) In addition to deciding to withdraw an accreditation the accreditation committee may, at the same time, decide to disqualify the applicant from making a further application for accreditation under article 3(1)(b) for a period of up to 5 years.

(10) The Authority shall send the applicant written notification of a decision taken under paragraph (1) or (8) within 2 weeks of it being taken.

Suspension

8.—(1) Where—

- (a) an applicant's membership of, or registration with, a professional regulatory body is suspended or otherwise temporarily removed, resulting in a breach of a condition imposed in terms of article 5(5)(c), or
- (b) a condition to similar effect has been so breached,

the accreditation committee shall suspend the applicant's accreditation for so long as such condition is not fulfilled.

(2) If the accreditation committee considers that an accreditation should not be valid pending a decision under article 7(8) it may at any time suspend that accreditation, in whole or in part.

(3) Any suspension under paragraph (2) shall remain in force until the accreditation committee sends the applicant written notification in accordance with article 7(10) or until such earlier time as the committee shall determine.

(4) Where the accreditation committee suspends an applicant's accreditation it shall send the applicant written notification of this decision within 2 weeks of it being taken.

(5) Except where the accreditation committee decides otherwise, the suspension of an accreditation shall not affect the validity of any work carried out by an accredited person in consequence of that accreditation nor of any work conducted in an accredited manner prior to such suspension.

APPEALS

Appeals

9.—(1) A person who made an application in terms of article 3(1) may appeal against a decision—

- (a) under article 5(2) in respect of that application, or
- (b) under article 7(8) to withdraw the resulting accreditation.

(2) Such an appeal must—

- (a) be sent to the Authority within 4 weeks of the date of the notification to the applicant of the relevant decision;
- (b) specify the part of the decision against which the appeal is taken; and
- (c) be supported, within 4 weeks of being sent to the Authority, by such written representations as the appellant wishes to be considered.

(3) Except where the appeal is in respect of a decision under article 7(8), any accreditation which is valid immediately before the appeal is sent to the Authority shall continue to be valid until a decision has been taken under article 15(1).

Appeals committee

10.—(1) The Authority shall constitute an appeals committee which shall, if authorised to do so by the Authority, determine appeals sent to the Authority in accordance with article 9.

(2) Subject to paragraph (4), the Authority shall appoint a minimum of two of its members to form the appeals committee, which number must include the convener, and the convener shall be appointed to chair the committee (but, if he or she has an interest in a particular appeal such that he or she cannot form part of the committee for that decision, or if the convener is otherwise unable to participate or if the office of convener is temporarily vacant, the Authority shall appoint another member to chair the committee for that appeal decision).

(3) The quorum shall be two of the members so appointed, of whom one must be the person appointed to chair the committee.

(4) No member who formed part of the accreditation committee which made the decision under appeal shall form part of the appeals committee which considers the appeal.

(5) The validity of any proceedings of the appeals committee is not affected by the absence of any member appointed under paragraph (2), provided that the number of members considering an appeal does not fall below two.

Hearing

11.—(1) Where the Authority does not authorise the appeals committee for the purposes of article 10(1), references in this article and in articles 12 to 15—

- (a) to the appeals committee shall be read as references to the Authority; and
- (b) to the person appointed to chair the appeals committee shall be read as references to the convener (or, if the convener is unable to participate for any reason or if the office of convener is temporarily vacant, to such member of the Authority as shall be appointed by it for this purpose).

(2) There shall be an oral hearing, of which the Authority shall give the appellant no less than 6 weeks' notice and at which the appellant will be entitled to make oral representations, either personally or through a representative.

(3) If the appellant wishes to be represented at the hearing, he, she, or, as the case may be, it shall send written notification of the name, address and occupation of the representative to the Authority no later than 2 weeks before the hearing.

(4) The hearing shall take place in private unless the appellant requests otherwise.

(5) Unless the hearing takes place in public, the only people who may attend are—

(a) the members of the appeals committee appointed to determine the appeal;

(b) the appellant (or, in the case of a legal person, a nominee of the appellant);

(c) the appellant's representative;

(d) any legal assessor appointed under article 14(1);

(e) any person to whom—

(i) paragraph (1) (but not paragraph (2)); or

(ii) paragraph (3),

of article 13 applies; and

(f) any employee of the Authority whose attendance the person chairing the committee has approved.

Procedure

12.—(1) Subject to the provisions of this Order and to any measure taken by the Authority under paragraph 4(1)(c)(i) of schedule 2 to the 2003 Act, the appeals committee may regulate its own procedure for dealing with an appeal.

(2) At the beginning of the hearing the person appointed to chair the appeals committee shall explain the order of proceeding which the committee proposes to adopt at the hearing.

(3) The appeals committee may consider any document or information, notwithstanding that such document or information may be inadmissible in proceedings before a court of law, provided that a copy of such a document or such information has been made available to the appellant no later than 2 weeks before the hearing or such later time as shall appear to the committee to be reasonable in the circumstances.

Witnesses

13.—(1) Where an appellant wishes to call any person to attend a hearing to give evidence at it, he, she or, as the case may be, it shall send written notification to the Authority no later than 2 weeks before the hearing of the name, address and occupation of the person and of what the general nature of his or her evidence is likely to be.

(2) The person appointed to chair the appeals committee may refuse to permit such a person to attend the hearing to give evidence at it if he or she is satisfied that there are good and sufficient reasons for doing so; and in such an event the Authority shall send the appellant written notification of the refusal and of the reasons for it.

(3) The Authority shall notify the appellant in writing, no later than 2 weeks before the hearing, of the name, address and occupation of any person whom the appeals committee wishes to call to attend a hearing to give evidence at it, and of what the general nature of his or her evidence is likely to be.

Legal assessor

14.—(1) The Authority may appoint a legal assessor to advise the appeals committee in respect of a particular appeal.

(2) The functions of the legal assessor are—

- (a) to advise the appeals committee on questions of law arising in proceedings before it, whether or not reference is made by the committee to him or her in that regard; and
 - (b) to advise on the drafting of the decision of the committee (notwithstanding that he or she will not be a party to that decision).
- (3) To be qualified for appointment as a legal assessor, a person must—
- (a) have a 10 year general qualification (within the meaning of section 71(3)(c) of the Courts and Legal Services Act 1990⁽³⁾);
 - (b) be an advocate or solicitor in Scotland of at least 10 years' standing; or
 - (c) be a member of the Bar of Northern Ireland of at least 10 years' standing.
- (4) No person shall be a legal assessor if he is—
- (a) a member of the Authority; or
 - (b) employed by the Authority.
- (5) The appeals committee must notify the appellant in writing 2 weeks in advance of the hearing of the name of any legal assessor who has been appointed.
- (6) If a legal assessor is appointed in respect of an appeal, he or she must attend the hearing required by article 11(2) and any continuation thereof.
- (7) Any advice tendered by a legal assessor on a question of law shall, where it arises in the course of the hearing and before the appeals committee has begun its deliberations, be tendered in the presence of the appellant or the appellant's representative and otherwise shall be communicated to the appellant or the appellant's representative as soon as practicable (or, where such deliberations have begun, on their completion) and, where such communication is not in writing, a written record summarising the advice and any question giving rise to it shall thereafter be provided.

Decision

- 15.**—(1) The appeals committee may decide to uphold the appeal, in whole or in part, or to reject it; and where it upholds the appeal it shall take any decision in respect of the matter which the accreditation committee could have taken when it reached the decision under appeal.
- (2) The decision of the appeals committee may be taken by a majority of the members, provided that the person appointed to chair the committee shall, in the event that the votes of the members of the committee are tied, have a second vote.
- (3) The decision shall be recorded in a document which shall—
- (a) contain a statement of the reasons for the decision;
 - (b) be signed and dated by the person appointed to chair the appeals committee; and
 - (c) be sent to the appellant not later than 4 weeks after the end of the hearing.

GENERAL

Complaints

- 16.**—(1) A person who wishes to make a complaint relating to an accredited person or manner of assessing or minimising risk shall do so in writing to the Authority.
- (2) Subject to paragraph (3), the accreditation committee shall determine what action, if any, to take in response to the complaint.

(3) 1990 c. 41; to which no relevant amendments have been made.

(3) If the accreditation committee is satisfied that a complaint is frivolous or vexatious then it shall not consider it further.

(4) The accreditation committee shall notify the complainer, and may notify any other person, of its decision and the reasons for it and shall do so within 2 weeks of taking the decision.

Register

17.—(1) Subject to paragraph (4), the Authority shall maintain a register of all currently valid accreditations in respect of persons and of manners of assessing or minimising risk.

(2) The Authority shall publish the register on its website and shall make it available for inspection at its office at all reasonable hours and without charge.

(3) The register shall specify—

- (a) the name and business address of accredited persons;
- (b) a brief description of accredited manners of assessing or minimising risk together with the name and business address of the applicant; and
- (c) the period of accreditation and the purpose or purposes for which it is valid.

(4) Where the accreditation committee suspends an accreditation under article 8(1) or (2), the register shall be marked accordingly, but only for so long as the suspension is in force.

2006

A member of the Scottish Executive

EXPLANATORY NOTE

(This note is not part of the Order)

This Order creates a scheme of accreditation to be administered by the Risk Management Authority (“the Authority”). The Authority has functions in respect of ensuring the effective assessment and minimisation of the risk posed to the safety of the public at large by certain offenders and others, if they were to be at liberty.

Article 3 sets out application requirements for the two types of accreditation which may be awarded: first, in respect of a manner of assessing or minimising risk and, secondly, in respect of people who have functions in relation to the assessment and minimisation of risk. In each case, the relevant risk is that presented to the safety of the public at large by the release into the community of the subject. Whilst only natural persons may apply to be accredited, both natural and legal persons may apply for the accreditation of a manner of assessing or minimising risk.

Article 4 requires the Authority to constitute an accreditation committee and, where authorised by the Authority to do so, it shall decide whether or not to award accreditation (of either a manner of assessing or minimising risk or of a person), whether to withdraw or suspend an accreditation, and shall determine complaints relating to an accredited person or manner. This article also makes provision about the constitution of the committee.

Article 5 sets out what must be contained in any decision to award accreditation, and regulates the committee’s procedure in reaching such a decision. Article 5(1) provides that, where the Authority does not authorise the committee to take decisions, articles 5 to 8 and article 15 shall apply as if references to the committee were to the Authority.

Articles 6 to 8 deal, respectively, with the termination, withdrawal and suspension of an accreditation. Article 6(1) sets out the four situations in which an accreditation will be terminated. Article 7(1) and (2) sets out two situations in which an accreditation may be withdrawn. By virtue of paragraph (1) the accreditation committee will require to withdraw a person’s accreditation where he or she is no longer a member of, or registered with, a specified professional regulatory body in breach of a condition of the accreditation. Paragraph (2) provides a discretionary power for the accreditation committee to withdraw an accreditation, and paragraphs (3) to (8) set out procedural requirements.

In a similar manner, article 8 provides, in paragraph (1), a mandatory requirement to suspend an accreditation where a condition requiring a person to be a member of, or registered with a professional regulatory body is breached; and, in paragraph (2), a discretionary power to suspend an accreditation pending a decision on whether to withdraw the accreditation under article 7.

Articles 9 to 15 deal with appeals. Article 9(1) stipulates that an appeal may only be lodged against an accreditation decision (under article 5(2)) or a decision under article 7(8) to withdraw an accreditation. Article 9(2) sets out certain procedural requirements and article 9(3) provides that, in an appeal against an accreditation decision, that decision shall continue to have effect until the appeal is determined. Article 10 requires the Authority to constitute an appeals committee and makes provision about how it is to operate. It may only determine appeals if authorised to do so by the Authority. Article 11(1) provides that, where the Authority does not authorise the committee to determine appeals, articles 11 to 15 shall apply as if references to the committee were references to the Authority. Article 11(2) requires the committee to hold an oral hearing, and provides that the appellant may attend, with or without a representative. The main purpose of the hearing is to allow oral representations to be made. These will supplement the consideration of written material, as provided for by article 12(3). Unless the appellant requests otherwise, the hearing will be held in private, in which case only those people described in article 11(5) may attend. Article 12(1) provides

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: *The Risk Assessment and Minimisation (Accreditation Scheme) (Scotland) Order 2006 No. 190*

the committee with power to regulate its own procedure. Both the appellant and the committee may call any person as a witness at the hearing, by article 13, but the chair of the committee may, if he or she considers it appropriate, refuse to allow a witness to be called by an appellant.

Article 14 provides that the Authority may appoint a legal assessor, whose functions are to advise the committee on questions of law and to advise on the drafting of (without being a party to) the decision letter. Such letter shall, by article 15(3), contain a statement of the reasons for the decision and must be sent no later than 4 weeks after the end of the hearing.

Complaints relating to an accredited person or manner may be made under article 16 and shall be considered by the accreditation committee.

The Authority is obliged, by article 17, to maintain a register of all currently valid authorisations, which shall be open to inspection on its website (<http://www.rmascotland.gov.uk>) and at its office. The details which must be included are specified in article 17(3).