

## EXECUTIVE NOTE

### THE MANAGEMENT OF OFFENDERS ETC. (SCOTLAND) ACT 2005 (SPECIFICATION OF PERSONS) ORDER 2007 SSI/2007/92

#### Legislation

1. The above instrument was made in exercise of the powers conferred by section 10(3) of the Management of Offenders etc. (Scotland) Act 2005 (asp 14) (“the 2005 Act”). This instrument is subject to negative resolution procedure. It specifies the persons with whom the responsible authorities are required to co-operate in the establishment and implementation of suitable arrangements to assess and manage the risks posed in each local authority area by offenders subject to the notification requirements of part 2 of the Sexual Offences Act 2003.
2. The provisions of section 10(3) of the 2005 Act were commenced on 1 December 2006 by the Management of Offenders etc. (Scotland) Act 2005 (Commencement No 3) Order (S.S.I. 2006/545) for the purposes of enabling Scottish Ministers to specify such persons as described in that section.

#### Policy Objectives of the Multi Agency Public Protection Arrangements and the Duty to Co-operate

3. Section 10 of the 2005 Act requires the responsible authorities to jointly establish, in the area of each local authority, arrangements for the assessment and management of the risks posed by the persons referred to in section 10(1). (The responsible authorities are defined by section 10(7) as being, for each local authority area, the police, the local authority, the Health Board and the Scottish Ministers. The effect of section 10(14) is that the reference to the Scottish Ministers relates only to the functions exercised on their behalf by the Scottish Prison Service). To date only section 10(1)(a) of the 2005 Act has been commenced (SS.I 2006/545). This relates to offenders subject to the notification requirements of Part 2 of the Sexual Offences Act 2003 (c. 42). Accordingly, the scheme will operate only in relation to those offenders with effect from 2 April 2007. Once the section is fully operational the arrangements will also apply to offenders convicted on indictment of offences inferring personal violence and offenders whose convictions lead the responsible authorities to believe that they may cause serious harm to the public. The model for the delivery of the joint arrangements is known as the **Multi Agency Public Protection Arrangements (MAPPAs)**. The responsible authorities are required, by section 11 of the 2005 Act, to keep the effectiveness of the arrangements under review and to make any changes which they consider necessary or expedient.
4. Section 10(11) of the 2005 Act effectively provides that the relevant health board is a responsible authority only in respect of those persons subject to any of the orders specified in that subsection, on grounds of mental disorder. Section 10(12), however, provides that health boards also have a duty to co-operate in respect of offenders falling into the categories outlined at paragraph 3 above who are not mentally disordered. The arrangements for the management of mentally disordered offenders will be dealt with under the Care Programme Approach which will link with the MAPPAs.

5. Sections 10(3) and 10(4) of the 2005 Act provide that in jointly establishing and implementing arrangements, the responsible authorities **must act in co-operation with such persons as Scottish Ministers specify in an order made by Scottish Statutory Instrument**. As a result it will be the duty of those persons (the term ‘person’ including agencies and bodies) specified in the order to co-operate with the responsible authorities in assessing and managing the risk posed by sex offenders subject to notification requirements under the 2003 Act. Co-operation must be compatible with the exercise by those persons and authorities of their other statutory functions. It is intended as a means of enabling different agencies to work together while maintaining the responsibilities of their own particular roles.

6. The duty to co-operate is reciprocal. It will require the responsible authorities to co-operate with the duty to co-operate agencies and in turn those agencies to co-operate with the responsible authorities.

7. The overall objective of the legislation and supporting arrangements is to improve public protection by the adoption of a consistent approach to assessment and management of risk, to ensure that appropriate resources are allocated to the management of offenders and that agencies have an agreed understanding of their role through the duty to cooperate, supporting memorandum and protocols.

#### **Definition of the word “co-operate”**

8. Section 1(2) of the 2005 Act defines “co-operate” to **include the exchange of information**.

#### **Memorandum**

9. Section 10(5) of the 2005 Act provides for the duty to co-operate to be underpinned by a Memorandum prepared by the responsible authorities in consultation with the duty to co-operate agencies in each local authority area. The purpose of the memorandum is to enable the practicalities of co-operation to be agreed locally to ensure that there is a clear and agreed understanding by all involved of their roles and responsibilities. It is envisaged that the Memorandum will also include or be supported by protocols on sharing information. The principles under which the duty to co-operate will operate and a model memorandum have been prepared by the short life working group referred to at paragraph 11 below.

#### **Consultation**

10. During the Parliamentary passage of the Management of Offenders etc (Scotland) Bill, membership of the Tripartite Group, which normally includes representation from the Scottish Executive Justice Department, Association of Directors of Social Work and the Scottish Prison Service, was extended to include ACPOS and the Health Department. This was to ensure that they could be fully consulted at each stage on the provisions of sections 10 and 11. As part of the implementation process for sections 10 and 11 a short life Working Group was established by the Justice Department and representatives of the responsible authorities to consult agencies and bodies involved in the management of offenders to be specified in the duty to cooperate SSI. Membership comprised representatives of local authority housing departments, the Scottish Federation of Housing Associations, the voluntary sector, electronic monitoring providers and the Scottish Children’s Reporter Administration.

11. It was recognised that, in addition to Criminal Justice Social Work, other local authority departments such as housing and education would be required to cooperate in the joint arrangements and to share information, for example about housing or employment/training issues pertinent to the risk assessment and management process. However as the legislation includes the local authority as one of the responsible authorities, the roles of departments such as education within the local authority fall within their corporate responsibility and therefore do not require to be separately specified in the SSI as duty to cooperate agencies. The Scottish Executive Guidance on the implementation of the MAPPA model explains this to the agencies involved.

### **Specification of persons**

12. Agencies included in the SSI include registered social landlords which might be involved in providing accommodation for the offender. The duty to cooperate will be supported by the National Accommodation Strategy for Sex Offenders which has been developed in partnership with housing providers, CoSLA, police, social work, the prison service and the voluntary sector. The Strategy sets out the roles and responsibilities of agencies involved in the management of sex offenders and the relationships with housing providers.

13. Electronic monitoring providers are included in the SSI in recognition of the important service they provide in adding robustness to court orders and licence conditions.

14. The Principal Reporter to the Scottish Children's Reporter Administration has agreed to be included in the duty to cooperate. This reflects the importance of sharing information in those cases where a child has contact with an adult offender subject to the MAPPA or where the child is subject to the MAPPA by virtue of being prosecuted in the adult criminal justice system and falling within the categories of offender specified in section 10(1).

15. Voluntary sector agencies, specialising in work with offenders, are also included in the duty to cooperate arrangements where they provide services to or deliver services on behalf of the responsible authorities in the establishment and implementation of the joint arrangements. The range of services provided to offenders who pose risks might include for example intensive support and monitoring, residential facilities, supported flats and tenancies, bail supervision, services related to alcohol or drug misuse, group work programmes and employability support services.

### **Financial effects**

16. Duty to cooperate agencies cooperate only insofar as this is compatible with their existing statutory responsibilities. The duty does not require the agencies to do anything beyond what they are already required to do, other than to carry out their responsibilities collaboratively with the responsible authorities and other duty to cooperate agencies. The financial effects are therefore negligible. An allocation of £685,000 has been made available to fund 11 MAPPA coordinator and administrative support posts across Scotland to coordinate the implementation of the joint arrangements between the agencies involved.

**Scottish Executive Justice Department  
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