

**EXPLANATORY MEMORANDUM
TO
THE MANAGEMENT OF OFFENDERS ETC. (SCOTLAND) ACT 2005
(DISCLOSURE OF INFORMATION) ORDER 2010**

2010 No. 912

1. 1.1 This Explanatory Memorandum has been prepared by the Scotland Office and is laid before Parliament by Command of Her Majesty.
- 1.2 This Explanatory Memorandum contains information for the Joint Committee on Statutory Instruments.
2. **Purpose of the Instrument**
 - 2.1 This Order makes provisions in consequence of the Management of Offenders etc. (Scotland) Act 2005 (“the 2005 Act”). Sections 10 and 11 of the 2005 Act make provisions for the Responsible Authorities for the area of a Local Authority in Scotland (which are the Police, Local Authorities, Health Boards and Scottish Ministers) to jointly establish and implement arrangements for the assessment and management of the risks posed by certain categories of offender. In exercising these functions, the Responsible Authorities must act in co-operation with persons specified in an Order made by the Scottish Ministers.
 - 2.2 This Order enables the Secretary of State (effectively when exercising functions through the Department for Work and Pensions (“the DWP”) and the Child Maintenance and Enforcement Commission (“the Commission”)) to disclose information about offenders who are covered by section 10 of the 2005 Act to Responsible Authorities for the area of a Local Authority in Scotland in certain circumstances. It also enables Responsible Authorities to disclose information to the Secretary of State and the Commission, to other Responsible Authorities and to persons with whom the authorities must co-operate in certain circumstances. The purpose of the information sharing is to facilitate the establishment and implementation of arrangements for the management of risks posed by offenders covered by section 10 of the 2005 Act.
3. **Matters of Special Interest to the Joint Committee on Statutory Instruments**
 - 3.1 The Order is to be made in exercise of the powers conferred by section 104, 112(1) and 113(2) of the Scotland Act 1998 (“the 1998 Act”). The Order is subject to the negative resolution procedure and is to be laid in the UK Parliament. Section 104 of the 1998 Act provides that subordinate legislation may make such provision as the person making it considers to be necessary or expedient in consequence of any Act of the Scottish Parliament; in this case the 2005 Act.

- 3.2 This section 104 Order is expedient in consequence of the 2005 Act. Although the establishment and implementation of arrangements for the assessment and management of offenders in Scotland is devolved, enabling the Secretary of State and the Commission to disclose and receive information in connection with those arrangements, in the manner proposed by the Order, affects the exercise of functions reserved by sections F1 and F2 and H3 of Schedule 5 to the 1998 Act (Social Security Schemes, Child Support and Employment and Training).
- 3.3 The Order is intended to improve public protection, for example, to ensure that high risk offenders are not given unsuitable work placements. The Order will put the informal administrative arrangements currently in place between the DWP and Responsible Authorities in Scotland on a legislative footing. The Order will also provide the DWP staff with statutory protection, when it has been deemed necessary for the DWP to pass on information about an offender to Responsible Authorities in Scotland, as currently they are not afforded the same protection given to the DWP staff in England and Wales by virtue of powers in the Criminal Justice Act 2003 (“the 2003 Act”).

4. Legislative Context

- 4.1 The 2005 Act received Royal Assent on 8 December 2005. Commencement of the provisions in sections 10 and 11 of the 2005 Act is being staged. The provisions in relation to sex offenders subject to the notification requirements of Part 2 of the Sexual Offences Act 2003 came into effect on 2 April 2007. The provisions in relation to offenders in respect of whom a Restriction Order is made under section 57 or section 59 of the Criminal Procedure (Scotland) Act 1995 or section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (known as 'restricted patients') commenced on 30 April 2008. The provisions in relation to the remaining categories of offender are not yet in force.
- 4.2 Section 10(3) and (4) of the 2005 Act requires Responsible Authorities and persons specified in an Order made by the Scottish Ministers to co-operate with each other in the establishment and implementation of arrangements under section 10 of that Act. This enables them to jointly establish and implement the Multi-Agency Public Protection Arrangements (“MAPPAs”).
- 4.3 The introduction of MAPPAs across Scotland under the 2005 Act gave a consistent approach to the management of high risk offenders across all Local Authority and Police Force areas. It provides the framework for partnership working and its fundamental purpose is public safety and the reduction of serious harm. It is being developed along the lines of the MAPPAs already in place in England and Wales under the 2003 Act.

- 4.4 The Management of Offenders etc. (Scotland) Act 2005 (Specification of Persons) Order 2007 (SSI 2007/92), made under section 10(3) of the 2005 Act, came into force on 2 April 2007. It specifies those persons with whom the Responsible Authorities are required to co-operate. The persons who are specified are set out in the Schedule to the Order. They are Registered Social Landlords, persons or bodies under contract to provide electronic monitoring services, the Principal Reporter, and any person or body who provides services for the assessment and management of sex offenders in one or more Local Authority area in Scotland.
- 4.5 The DWP and the Scottish Executive have been working to strengthen the administrative arrangements between the DWP and the Commission, and Responsible Authorities for the exchange of information for the purpose of managing high risk offenders in Scotland. Unlike in England and Wales where the DWP has a prima facie duty to co-operate with Responsible Authorities under section 325(6)(b) of the 2003 Act, exchange of information in Scotland currently relies on the offender's consent or the public interest test.
- 4.6 The DWP and Scottish Ministers agreed that it was appropriate for information to be shared between the DWP, the Commission, and the Responsible Authorities. However, it was considered that there would be difficulties regarding the extent of the Scottish Ministers' powers to legislate to enable the DWP and the Commission to share information obtained and held by them for essentially reserved purposes. The Order, made under section 104 of the 1998 Act will therefore allow Responsible Authorities, the DWP and the Commission to exchange information within the terms of the Order.

5. Territorial Extent and Application

- 5.1 The Instrument extends to Scotland, England and Wales only.

6. European Convention on Human Rights

- 6.1 As this Instrument is subject to the negative resolution procedure, and does not amend primary legislation, no statement is required.

7. Policy Background

- *What is being done and why*

- 7.1 The arrangements under section 10 of the 2005 Act aim to improve public protection from dangerous offenders by providing a more consistent and joined up approach to the assessment and management of risk, enabling agencies to work more closely together and exchange relevant information within a statutory framework. This statutory framework is not, however, intended to override any existing statutory functions as exercised by a person or body.

- 7.2 In developing the MAPPA under section 10 of the 2005 Act, Scottish Ministers considered that these should operate on a similar basis to the arrangements under section 325 of the 2003 Act for England and Wales and that the DWP and the Commission should be included in those arrangements. DWP Ministers agreed to this proposal.
- 7.3 The fundamental purpose of the joint arrangements is public safety and the reduction of serious harm. The protection of children and adults at risk of harm is paramount and this is reflected in the high level of public and media interest in this policy.
- 7.4 The disclosure of information between the Responsible Authorities in Scotland and the DWP and the Commission will be founded on principles set out in existing administrative protocols. The protocol with Local Authority Criminal Justice Social Work deals with disclosure of restrictions that are placed on the employment of potentially dangerous offenders. This ensures that the DWP does not refer an offender to a job or training placement where this would pose a risk. The new arrangements seek to build on these existing protocols to facilitate mutual exchanges of information about high risk offenders.
- 7.5 Currently the Local Authority Criminal Justice Social Workers seek an offender's consent before they disclose job restrictions to the DWP, this Order will allow information to be exchanged without an offender's consent, although the offender will be informed that the information on restrictions is being passed to the DWP. The Order will also allow the DWP and the Commission staff to pass personal information on a case by case basis to the Responsible Authorities to assist them to manage offenders. It is not possible to list all occasions when this would happen but it is likely to occur, for example, when a customer is known to be an offender falling within section 10 of the 2005 Act or makes it known to the DWP that he is such an offender and the DWP do not hold any notifications of restrictions. The DWP will need to disclose personal information such as name, date of birth and address details to allow the Local Authority Criminal Justice Social Worker to locate the records and disclose the restrictions, if held. Although the arrangements to date have focused more on Social Security and employment matters than Child Support, the Commission is included to allow flexibility for any future engagement and to ensure consistency with the existing provisions in the 2003 Act.

- *Consolidation*

- 7.6 This Instrument does not amend another Instrument, therefore no Consolidation is required.

8. Consultation Outcome

- 8.1 During the Parliamentary passage of the Management of Offenders etc. (Scotland) Bill, the Scottish Executive Justice Directorate consulted all parties who would be involved in the MAPPA i.e. Association of Directors of Social Work, the Scottish Prison Service, the Association of Chief Police Officers in Scotland (“ACPOS”), health bodies, 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. All parties were represented on a multi-agency working group which was fully supportive of the arrangements to strengthen public protection.

9. Guidance

- 9.1 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 Memorandum will also cover information sharing under the Order and will be supported by protocols on sharing information. Guidance on preparing the Memorandum and information sharing protocols was included in the wider MAPPA guidance published on the Scottish Executive website. The existing protocols with the DWP will be updated to reflect the new arrangements in this Order.

10. Impact

- 10.1 A Regulatory Impact Assessment has not been prepared for this Instrument as it has no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector is minimal.

11. Regulating Small Business

- 11.1 The legislation does not apply to small businesses.

12. Monitoring and Review

- 12.1 The Responsible Authorities, the DWP and the Commission will be subject to their own internal review and monitoring processes in individual cases. For example, the National Objectives and Standards for Criminal Justice Social Work prescribe the roles and responsibilities of case managers in planning, managing, monitoring and reviewing case management plans for individual offenders. Additionally, arrangements are in place between the MAPPA Responsible Authorities at a senior and strategic level to meet the requirements of section 11 of the 2005 Act, “*to keep the arrangements established by them under review for the purpose of monitoring the effectiveness of those arrangements and making any changes to them that appear necessary or expedient.*” Strategic Oversight Groups review both quantitative and qualitative data on at least a quarterly basis.

13. Contact

- 13.1 Any queries regarding the Instrument should be directed to Jennifer Manton at the Scotland Office (jennifer.manton@scotlandoffice.gsi.gov.uk).