



# Management of Offenders etc. (Scotland) Act 2005

2005 asp 14

## *Community justice authorities*

- 6 Power of Scottish Ministers to require action by community justice authority: failure by that authority**
- (1) Where it appears to the Scottish Ministers on a report under section 5 or by a person mentioned in subsection (2)—
- (a) that a community justice authority is failing, or has failed, satisfactorily to exercise its functions under this Act; and
  - (b) that the issue under this section of an enforcement direction to the authority would be justified,
- they may issue a preliminary notice to the authority.
- (2) The persons are—
- (a) a person authorised under section 6(1) of the Social Work (Scotland) Act 1968 (c. 49) (supervision of establishments providing accommodation for persons and inspection of records etc.);
  - (b) Her Majesty's Chief Inspector of Prisons for Scotland;
  - (c) Audit Scotland;
  - (d) a person specified by the Scottish Ministers for the purposes of this section and of section 7.
- (3) A preliminary notice is one which—
- (a) informs the authority of the apparent failure mentioned in subsection (1)(a); and
  - (b) requires the authority to submit to the Scottish Ministers, within such period as is specified in the notice, an appropriate written response.
- (4) An appropriate written response is one which—
- (a) states that the authority is not so failing (or as the case may be has not so failed) and gives reasons supporting that statement; or
  - (b) acknowledges that the authority is so failing (or has so failed) but gives reasons why an enforcement direction should not be issued to it.

- (5) If a response is given under subsection (4)(b), the authority must either describe in the response the measures it proposes to take to remedy the failure or explain why no such measures need be taken.
- (6) Where, following service of the preliminary notice and the expiry of the period specified in that notice, it still appears to the Scottish Ministers that the circumstances are as mentioned in paragraphs (a) and (b) of subsection (1), they may issue an enforcement direction to the authority.
- (7) An enforcement direction is one which requires the authority to take, within such time as is specified in the direction, such action as is so specified, being action for the purpose of remedying, or preventing the recurrence of, the failure.
- (8) An authority to which an enforcement direction is issued under this section must comply with it.
- (9) The Scottish Ministers may vary or revoke an enforcement direction.
- (10) The Scottish Ministers may, instead of or as well as issuing an enforcement direction to the authority, make such recommendations to the authority as they think fit.
- (11) When the Scottish Ministers issue, vary or revoke an enforcement direction they are to—
  - (a) prepare a report as to their exercise of the power in question; and
  - (b) lay that report before the Parliament.
- (12) The Scottish Ministers may by order made by statutory instrument amend subsection (2) so as (either or both)—
  - (a) to add to the persons there described;
  - (b) to alter the description of, or omit, any of those persons.
- (13) A statutory instrument containing an order under subsection (12) is not made unless a draft of the instrument has been laid before, and approved by resolution of, the Parliament.