

ANGUS COUNCIL

SOCIAL WORK and HEALTH COMMITTEE
HOUSING COMMITTEE
RESOURCES and CENTRAL SERVICES COMMITTEE

21 AUGUST 2003
21 AUGUST 2003
4 SEPTEMBER 2003

CRIMINAL JUSTICE (SCOTLAND) ACT 2003

JOINT REPORT BY THE DIRECTORS OF SOCIAL WORK, HOUSING, LAW AND
ADMINISTRATION AND THE PERSONNEL SERVICES MANAGER

ABSTRACT

This report advises members of the above committees of the contents of the Criminal Justice (Scotland) Act 2003. This Act makes provision regarding public protection, victims rights, sexual offences, prisoners and sentencing, drugs courts, non custodial sentences, childcare issues, evidential issues, bribery and corruption, criminal records, local authority functions and other miscellaneous matters.

This report highlights key provisions contained within the Act and implications for Angus Council.

1 RECOMMENDATIONS

It is recommended that the Social Work and Health Committee:-

- (i) notes the contents of this report;
- (ii) instructs the Acting Director of Social Work to make any necessary changes to operational instructions and procedures resulting from the Criminal Justice (Scotland) Act 2003, in particular as it relates to risk assessment and management of high risk offenders, remands of young people by courts and child protection.

It is recommended that the Housing Committee:-

- (i) notes the contents of this report
- (ii) instructs the Director of Housing to make any operational changes necessitated by the Criminal Justice (Scotland) Act 2003, especially those relating to anti-social behaviour orders and anti-social behaviour strategy.

It is recommended that the Resources and Central Services Committee:-

- (i) notes the contents of this report
- (ii) instructs the Personnel Services Manager to make any changes to personnel practices necessitated by the Criminal Justice (Scotland) Act 2003, with particular reference to Part 10 of the Act as it relates to criminal records certificates.
- (iii) instructs the Director of Law and Administration to make any changes to practice necessitated by the Criminal Justice (Scotland) Act 2003, especially those relating to the powers and operation of the District Court.

2 INTRODUCTION

The Act is in 12 parts. The relevant provisions of each part can be summarised as follows.

Part 1 deals with the assessment, treatment and sentencing of serious violent and sexual offenders.

It introduces a new life sentence of an order for lifelong restriction (OLR).

This Part also provides for the establishment of a new public body to be known as the Risk Management Authority (RMA) and sets out the functions of the RMA with respect to risk assessment procedures.

The Risk Management Authority will have specific functions in relation to offenders for whom risk management plans are to be prepared.

The operational guidance for the Risk Management Authority has yet to be issued, however social work criminal justice services (CJS) will have a key role in preparation and implementation of risk assessments and risk management plans.

Part 2 establishes the following rights for victims of certain crimes:

- the right to make and submit a written 'victim statement' to the Court;
- the right to receive information about the release or escape of an offender, and to receive information from and make representations to the Parole Board for Scotland.

Part 2 also contains provisions empowering the police to pass on information about victims of crime to prescribed bodies who can provide counselling and support.

This part will enhance the functioning of existing joint arrangements in place in Angus between police and social work to protect and support victims of serious offences.

Part 3 increases the range and severity of sentencing powers for serious sexual offenders. This may lead to a slight increase in workload for CJS with respect to licence supervision.

Part 4 deals with the custody and detention of prisoners, their release and monitoring of their movements while on release. It makes technical changes regarding remanding certain young people in custody.

- In relation to the law covering the release of prisoners, this part of the Act now provides that a determinate sentence may be served consecutively to the punishment part of a life sentence and vice versa.

This Part will also enable the Scottish Ministers to set a condition on an offender's licence for the electronic monitoring of that offender when released from custody.

Part 5 empowers drug courts to impose interim sanctions such as short periods of custody or short periods of community service for non-compliance with a probation order or drug treatment and testing order whilst allowing the original order to continue. Drug Courts are not available in Angus as yet.

Part 6 makes changes to the law in relation to restriction of liberty orders and non-harassment orders. It also make changes with respect to supervised attendance orders - by amending the Criminal Procedure (Scotland) Act 1995 to make changes to the penalties for breaching a supervised attendance order and to give the courts the power to impose a supervised attendance order as a first instance disposal for adult offenders. It also makes supervised attendance orders (alternative to custody for fine default) available to 16-18 year olds and reduces penalties for breach of the orders. These changes have been noted by the Department of Law and Administration and CJS as it effects the operation of supervised attendance and the District Courts.

This part introduces “interim anti-social behaviour orders” (ASBOS). Interim ASBOS are intended to provide more immediate protection from anti-social behaviour and can be applied for pending the substantive application for an ASBO. It will be necessary to satisfy the Sheriff that the anti-social conduct complained of would be established when a full hearing takes place. Consequently, the same quantity and quality of evidence will be required for an interim ASBO as a full ASBO.

This part also enables registered social landlords (eg Housing Association) to apply for an anti social behaviour order whereas at present only a local authority can do so.

There will be a need to amend current policies and procedures and undertake appropriate training and awareness-raising of the changes.

Part 7 clarifies the law in relation to the physical punishment of children under 16. Punishment involving a blow to the head or shaking or the use of an implement are prohibited.

This Part also prohibits the publication of material intended or likely to identify children in any way concerned in children's hearings and connected proceedings.

These changes may help social work in aspects of child protection work.

Part 8 amends the Criminal Procedure (Scotland) Act 1995 to:

- allow the police to retain DNA and fingerprints given voluntarily and with the consent of the person giving the sample;
- enable previous convictions from other member States of the European Union to be recognised by the Scottish courts;
- changes the maximum period for which a court can adjourn a case following conviction pending sentence to 4 weeks or on cause shown 8 weeks in all cases.

This may aid CJS by allowing longer for preparation of court reports in some cases.

Part 9 changes the law on corruption as it relates to the international aspects of corruption.

Part 10 extends the provisions of Part V of the Police Act 1997 to give the Scottish Ministers powers to:

- check that persons applying to become registered persons and those already registered to countersign applications for criminal record and enhanced criminal record certificates are suitable persons to receive criminal record information;
- refuse to register or to cancel the registration of an unsuitable person;
- notify registered persons where a new conviction against an individual is recorded subsequent to the issue of a criminal record or an enhanced criminal record certificate.

It also -

- adds to the range of persons qualifying for the enhanced criminal record certificate;
- extends the scope of the code of practice with which registered persons must comply;
- makes failure to comply with the code of practice a ground for de-registration;
- extends the scope of the regulations dealing with the maintenance of the list of registered persons.

Once the Scottish Executive has published guidance on this section of the Act, the Personnel Services Manager will consider any changes which need to be made to current personnel practices as they relate to criminal record disclosures.

Part 11 allows the Scottish Executive to fund the new Criminal Justice Social Work Groupings. Angus is part of the Tayside Criminal Justice Social Work Partnership and financial agreements between Angus, Dundee City and Perth and Kinross are already in place.

This part also allows the Scottish Executive to fund CJS to undertake work with offenders during periods of arrest and deferment of sentence.

Part 12 deals with:

- the introduction of police custody and security officers;
- the increase of penalties for wildlife crime, and related changes to Part I of the Wildlife and Countryside Act 1981 which enhance police powers for certain wildlife crimes;
- the removal of the mandatory requirement that juries must be secluded for a continuous period whilst they are considering their verdict;
- the introduction of live TV links between courts and prisons or other places of detention;
- offences aggravated by religious prejudice;
- allowing search warrants issued in Northern Ireland in relation to premises in Scotland to be enforced on endorsement by a sheriff or JP in the jurisdiction in which the premises can be found;
- enabling electronic communication and storage for search warrants;
- local strategies to deal with anti-social behaviour;

A strategy will require to be prepared on a corporate basis and jointly with the Chief Constable of Tayside Police. The strategy will be published by the local authority. Police Circular 6/2003, whilst making reference to the duty to prepare and publish an anti-social behaviour strategy does not indicate the timescale by when the strategy must be prepared and published.

3 PROPOSAL

It is proposed that members note the contents of this report and that they instruct the respective Heads of Department to take forward all relevant issues arising out of the Criminal Justice (Scotland) Act 2003; this to include any necessary changes to operational practices and procedures and work with key partners.

4 FINANCIAL IMPLICATIONS

There are no financial implications arising out of this report for Angus Council. The extra duties for local authorities with respect to the new Order for Lifelong Restriction, work with offenders subject to deferment of sentence or following arrest should be matched by new finance to the Tayside Criminal Justice Social Work Partnership. The financial implications arising from implementing actions contained in the anti-social behaviour strategy cannot be quantified at this time.

5 HUMAN RIGHTS IMPLICATIONS

There are no direct implications specifically for Angus Council arising out of this report. However there are human rights issues implicit in legislation which introduces a new life sentence, the length of the prison element of which will depend upon assessment of risk as opposed to seriousness of offence. There may, potentially, be challenges to decisions made by Courts under this legislation under human rights legislation.

6 CONSULTATION

The Chief Executive and the Director of Finance were consulted in the preparation of this report.

7 CONCLUSION

This report highlights key aspects and contents of the Criminal Justice (Scotland) Act 2003 and requires officers to take appropriate actions to meet any new duties specified therein.

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R Ashton
Director of Housing

C Coull
Director of Law and Administration

H Robertson
Personnel Services Manager

NOTE: No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to any material extent in preparing the above report.