

POLICE, PUBLIC ORDER AND CRIMINAL JUSTICE (SCOTLAND) ACT 2006 (ASP 10)

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Public Order Etc.

Chapter 1: Football Banning Orders

Variation, termination, information and appeals

Section 57 – Variation of certain requirements of order

95. This section empowers courts to impose or omit a requirement of an order imposed by a court to surrender a passport if there are exceptional circumstances. It also empowers the courts to impose, replace or omit any additional requirements imposed by the court under section 53(4). Both the criminal and civil courts can do this, on the application of either a chief constable as specified in subsection (5) or the person subject to the order who would need to show that there had been a relevant change in circumstances which meant that the requirements were no longer necessary. This section also empowers civil courts to omit the requirement to surrender a passport imposed by the civil court or to impose this requirement if it was not imposed when the order was first made. The civil court can also do this on the application of the chief constable who applied for the order.
96. For orders imposed on conviction it will be the court that made the order which has power to change the requirements. For orders imposed on application to a sheriff it will be a sheriff sitting in the original sheriff court district who can vary the order, although a sheriff court will also have power to transfer proceedings to another sheriff court district if appropriate.

Section 58 – Termination of order

97. This section empowers the courts to terminate a banning order which has had effect for at least two thirds of its length, under certain circumstances, on the application of the person subject to the order; and sets out the arrangements for this.

Section 59 – Information about making, varying or terminating order etc.

98. This section specifies those to whom the court must provide copies of the banning order or orders that vary or terminate an order. It sets out the arrangements for providing copies of banning orders where the individual subject to a banning order is in custody. It also provides for the Scottish Ministers to prescribe, by order made by statutory instrument subject to negative resolution procedure, additional persons who must be provided with a copy of the order.

Section 60 – Appeals

99. Subsection (1) provides that a football banning order made by a criminal court and any variation or termination of such an order is to be treated as a sentence for the purposes of any appeal, thereby attracting the appeals procedure in the Criminal Procedure (Scotland) Act 1995.
100. Subsections (2) and (3) provide that where a football banning order made by a criminal court is quashed on appeal, and unless it was specified by the court that the order was quashed on the grounds that the court erred in holding that the offence was one to which section 51(4) applied, the High Court of Justiciary may declare that the offence involved violence or disorder and was related to a football match.
101. Subsections (4)-(8) set out the appeals procedure in respect of football banning orders imposed by the civil courts and the time limits that apply. An appeal can be made on a point of fact or law.