

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

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 2: Public Order Etc.**

#### ***Chapter 1: Football Banning Orders***

#### **Enforcement of order in relation to foreign matches**

#### ***Section 61 – Foreign matches: reporting and other requirements***

102. This section sets out the role and functions of the football banning orders authority and, in following the football banning orders authority's direction, certain constables, in relation to matches played outwith the United Kingdom. Specifically, it requires the football banning orders authority to issue notices to those persons subject to banning orders. These notices require the person to report to a police station and surrender their passport if they have one, or declare that they do not have one, if they do not. The football banning orders authority must issue such a notice when it is of the opinion that requiring the person to report is likely to reduce the risk of violence or disorder at or in connection with the overseas match.
103. Subsection (6) enables the football banning orders authority to establish criteria for determining whether to impose a notice requiring a person to report and surrender their passport. The criteria may be used for determining whether notices should be imposed in individual cases or on particular groups of people. For example, it might be reasonable to establish criteria that all supporters of a particular team subject to banning orders should be required to report and surrender their passport when that team is playing abroad, especially if there has been recent trouble aboard involving supporters of that team.

#### ***Section 62 – Notices under section 61(4): further provision***

104. This section provides that individuals subject to banning orders may not be required to surrender their passport under section 61(4) except in the control period in relation to a match or tournament played outwith the United Kingdom. It also defines what the control period is. For a regulated football match outside the United Kingdom it is the period beginning 5 days before the day of the match and ending when the match is finished or cancelled. For certain external tournaments it may also be appropriate for a block control period to apply so that the person is required to report and surrender their passport for the whole of the external tournament. The block period will apply 5 days before the day of the first match in the tournament (excluding qualifying games) and finish on the day on which the last football match is played. The Scottish Ministers will require to prescribe by order made by statutory instrument subject to negative resolution procedure the external tournaments that should be subject to a block control period. These could be tournaments such as the European Championships and the World Cup.

105. Subsection (2) requires the police to return the passport to the individual as soon as is reasonably practicable after the control period ends.

### **Section 63 – Sections 61 and 62: guidance**

106. This section requires the football banning orders authority to have regard to any guidance issued by the Scottish Ministers that relates to their functions under sections 61 and 62, when carrying out those functions.

### **Section 64 – Exemption from notice served under section 61(4)**

107. This section provides that persons who are subject to a football banning order may apply for an order disapplying any notice issued to them under section 61(4) that requires them to report to a police station and surrender their passport, or declare that they do not have a passport, in connection with a particular regulated football match outside the United Kingdom. The applicant will require to show to the football banning orders authority's or, as the case may be, the constable's satisfaction that there are circumstances which justify them being so exempted and that because of those circumstances the applicant would not attend the match or matches if so exempted; for example, if they need to attend a family funeral abroad during the control period.
108. Where the application is made during a control period, the constable responsible for a police station may make the order but must refer the issue to the football banning orders authority unless this is not reasonably practicable. Otherwise, the application will be made to the football banning orders authority. Where a constable makes an order disapplying any notice issued under section 61(4), the constable must give written notice of this fact to the authority as soon as is reasonably practicable.
109. The ability for a person to apply for an order disapplying the reporting and passport surrender provisions is included to take account of articles 1 and 2 of Council Directive [73/148/EEC](#) of 21 May 1973 in relation to freedom of movement, and also the comments of the court in the case of **Gough & Anor v Chief Constable of Derbyshire** [2002] WWCA CIV 351 – 20th March 2002 in the context of the equivalent legislation for England and Wales in the Football Spectators Act 1989. The court was satisfied that whilst restraints could be imposed on persons leaving the country on the grounds of public policy, in order to ensure that the scheme was proportionate under the European Convention on Human Rights, exemptions should be permitted where the reason for going abroad was other than attendance at the regulated match.

### **Section 65 – Section 64: supplementary**

110. This section requires the football banning orders authority and the constable to have regard to any guidance issued by the Scottish Ministers, which they shall publish from time to time, when taking decisions under section 64. It also provides for the appeals process against the decision of the football banning orders authority or the constable on their decisions to refuse to grant an exemption under section 64.

### **Section 66 – Suspension of reporting requirements**

111. This section suspends the requirements for a person subject to a banning order to report to a police station and surrender their passport during any period where the person is not resident in Scotland. It also suspends certain requirements of banning orders from taking effect where the person subject to a banning order is in custody. It provides that, if the person was prevented from reporting initially to a police station because he or she was in custody, they must report to a police station within 5 days beginning with the date of their release if, when they are released, their banning order has more than 5 days to run.