

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

Making and content of orders

Section 51 – Making of order on conviction of a football-related offence

84. This section sets out the arrangements under which a court may impose a football banning order on an individual convicted of an offence, instead of or in addition to any sentence the court could impose for the offence. The court must be satisfied that the offence involved engaging in violence or disorder as defined in section 56 and that it related to a football match. The court must also be satisfied that there are reasonable grounds to believe that making the order would help to prevent violence or disorder at or in connection with any football matches.
85. Subsection (5) provides that where a court does not impose a football banning order but is satisfied that the offence involved violence or disorder and related to a football match then the court may declare that to be the case. This declaration will then be recorded.
86. Under subsection (6) an offence will automatically be regarded as related to a football match if it is committed at the match or on the way to or from a football match. As an example, where football fans who are attending different matches engage in violence or disorder with each other on the way to their respective matches the offences would be regarded as being related to a football match. The definition of a football match includes matches on television. For example a person may be watching the match in a pub, wearing football colours, where a fight breaks out in the pub during or after the match.
87. In addition an offence will be regarded as relating to a match if it appears from all the circumstances that the offence was motivated wholly or partly by a football match. In other words, the court will need to find some link between the behaviour and a football match. This could include, for example, where groups of rival supporters do not go to a football match but instead meet at a different place for a pre-arranged fight.

Section 52 – Making of order on application to the sheriff

88. This section empowers the police to make a summary application to a sheriff court for a football banning order to be imposed against an individual, and sets out the arrangements under which a court may impose a football banning order following such an application. Firstly, the court must be satisfied that the person against whom the order is sought has contributed to violence or disorder in the United Kingdom or elsewhere.

As with section 51, violence or disorder is defined in section 56. The second test that the court will apply is in line with the test for a banning order on conviction, namely whether there are reasonable grounds to believe that making the order would help to prevent violence or disorder at or in connection with any football matches. This section also sets out matters which the sheriff may take into account in deciding whether or not to impose a banning order.

Section 53 – Content of order

89. This section sets out the effect of a banning order. Certain requirements of the order are mandatory and other requirements are at the discretion of the court. The order prohibits the person from attending any regulated football match (defined in section 55) and requires the person to report at a police station in accordance with the reporting requirements in this Chapter of the Act (see, for example, section 61) in connection with certain regulated football matches. The order must also require the person subject to the order to report initially to a police station within 5 days of the order being made, and to notify certain prescribed information to the football banning orders authority within 7 days of the occurrence of any events that are relevant to the order. (Schedule 5 sets out the list of events that require such notice and the information that must be provided: for example within 7 days of a change of address the person would be required to notify their new address to the football banning orders authority.)
90. Unless there are exceptional circumstances the order must also require the surrender of the person's passport when relevant overseas matches are to be played. These exceptional circumstances might be that the person's employment means he/she needs to travel frequently (for example, an airline pilot). The banning order may, in addition to these mandatory conditions, require the individual to comply with any additional requirements which the court considers would help prevent violence or disorder at or in connection with football matches. This could include prohibiting the person from football matches that are not regulated matches, such as junior league matches if this was thought to be necessary.
91. Subsection (7) sets out the maximum lengths of time a banning order may last, depending on the circumstances in which the order was imposed.

Section 54 – Section 53: supplementary

92. This section gives effect to schedule 5 (relevant events and prescribed information), defines the meaning of the term imprisonment for the purpose of section 53(7)(a) and makes clear that banning orders start on the day which the order is imposed by a court.

Section 55 – “Football matches” and “regulated football matches”

93. This section defines football matches and regulated football matches for the purposes of this Chapter and empowers the Scottish Ministers to add matches to or remove matches from the list of regulated football matches by order made by statutory instrument subject to negative resolution procedure. It also makes clear that this Chapter applies to football matches both that are played and that are intended to be played.

Section 56 – “Violence” and “disorder”

94. This section defines “violence” and specifies certain things which are to be included within “disorder” for the purposes of this Chapter.

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.

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 abroad 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.

Miscellaneous and general

Section 67 – Service of documents

112. This section sets out the methods by which a document to be served under this Chapter can be served on a person who is subject to a banning order.

Section 68 – Offences under this Chapter

113. Subsection (1) makes it an offence to fail to comply with (a) any requirements of a banning order; (b) a requirement imposed by a constable under section 61(1) for giving effect to an order in relation to regulated football matches outside the United Kingdom and (c) a requirement imposed by the football banning orders authority under section 61(4) to report to a police station at particular times and, if required, to surrender their passport or make a declaration that they do not have a passport.
114. Subsection (2) provides that a person charged with an offence under subsection (1) will have a defence if they can prove that they had a reasonable excuse for breaching the requirements imposed by a banning order or a notice issued under a banning order.
115. Subsection (3) provides that the punishment on summary conviction for breaching any requirements of a banning order or failing to comply with a requirement imposed by a constable under section 61(4) is imprisonment for up to 6 months, a fine of up to level 5 (£5,000) or both.
116. Subsection (4) provides that the punishment on summary conviction for failing to comply with a requirement imposed by the football banning orders authority under section 61(1) is a fine not exceeding level 2 on the standard scale (£500).
117. Subsection (5) makes it an offence to provide false or misleading information in support of an application for exemption from the reporting and passport surrender requirements. That offence is punishable by summary conviction with a fine of up to level 3 on the standard scale (£1,000).

Section 69 – Interpretation of Chapter 1

118. This section sets out who is the football banning orders authority and defines passport for the purposes of this Chapter. The first football banning orders authority will be

*These notes relate to the Police, Public Order and Criminal Justice (Scotland)
Act 2006 (asp 10) (asp 10) which received Royal Assent on 4 July 2006*

the chief constable of Strathclyde Police who will establish a team to administer the orders on behalf of all Scottish forces. This section also provides that Ministers may by order made by statutory instrument subject to negative resolution procedure appoint a different authority to take on the role and functions of the football banning orders authority.