



# Police, Public Order and Criminal Justice (Scotland) Act 2006

2006 asp 10

## PART 2

### PUBLIC ORDER ETC.

#### CHAPTER 1

##### FOOTBALL BANNING ORDERS

###### *Making and content of orders*

#### **51 Making of order on conviction of a football-related offence**

- (1) This section applies where—
  - (a) a person is convicted of an offence; and
  - (b) the person was aged 16 or over at the time the offence was committed.
- (2) Instead of or in addition to any sentence which it could impose, the court which deals with the person in respect of the offence may, if satisfied as to the matters mentioned in subsection (3), make a football banning order against the person.
- (3) Those matters are—
  - (a) that the offence was one to which subsection (4) applies; and
  - (b) that there are reasonable grounds to believe that making the football banning order would help to prevent violence or disorder at or in connection with any football matches.
- (4) This subsection applies to an offence if—
  - (a) the offence involved the person who committed it engaging in violence or disorder; and
  - (b) the offence related to a football match.

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- (5) Where the court does not make a football banning order, but is nevertheless satisfied that the offence was one to which subsection (4) applies, it may declare that to be the case.
- (6) For the purpose of subsection (4)(b), an offence relates to a football match if it is committed—
  - (a) at a football match or while the person committing it is entering or leaving (or trying to enter or leave) the ground;
  - (b) on a journey to or from a football match; or
  - (c) otherwise, where it appears to the court from all the circumstances that the offence is motivated (wholly or partly) by a football match.
- (7) The references in subsection (6)(a) and (b) to a football match include a reference to any place (other than domestic premises) at which a football match is being televised; and, in the case of such a place, the reference in subsection (6)(a) to the ground is to be taken to be a reference to that place.
- (8) For the purpose of subsection (6)(b)—
  - (a) a person may be regarded as having been on a journey to or from a football match whether or not the person attended or intended to attend the match; and
  - (b) a person's journey includes breaks (including overnight breaks).
- (9) On making a football banning order, or a declaration, under this section, a court must explain to the person in ordinary language the effect of the order or declaration.
- (10) But failure to comply with subsection (9) does not affect the order's (or declaration's) validity.

## **52 Making of order on application to the sheriff**

- (1) The chief constable of a police force may apply for a football banning order against any person—
  - (a) who resides in the area of the police force; or
  - (b) who the chief constable believes is in or intends to come to the area of the police force.
- (2) An application under subsection (1) may be made to any sheriff—
  - (a) in whose sheriffdom the person against whom the order is sought resides;
  - (b) in whose sheriffdom that person is believed by the applicant to be; or
  - (c) to whose sheriffdom that person is believed by the applicant to be intending to come.
- (3) An application under subsection (1) is to be made by summary application.
- (4) A sheriff may make a football banning order if satisfied that—
  - (a) the person against whom the order is sought has at any time contributed to any violence or disorder in the United Kingdom or elsewhere; and
  - (b) 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.
- (5) Subsections (6) and (8) apply where a sheriff is determining whether to make a football banning order against a person.

- (6) The sheriff may take into account the matters mentioned in subsection (7) (amongst others), so far as considering it appropriate to do so.
- (7) Those matters are—
- (a) any decision of a court or tribunal outside the United Kingdom in respect of the person;
  - (b) the person’s deportation or exclusion from a country or territory outside the United Kingdom;
  - (c) the person’s removal or exclusion from premises used for playing football matches, whether in the United Kingdom or elsewhere;
  - (d) the person’s conduct recorded on video or by any other means.
- (8) The sheriff may not take into account anything done by the person before the beginning of the relevant period, except circumstances ancillary to a conviction.
- (9) In subsection (8)—
- “the relevant period” means the period of 10 years ending with the day on which the application for the order was made; and
- “circumstances ancillary to a conviction” has the same meaning as it has for the purposes of section 4 of the Rehabilitation of Offenders Act 1974 (c. 53).
- (10) Subsection (8) does not prejudice anything in the Rehabilitation of Offenders Act 1974 (c. 53).
- (11) On making a football banning order, the sheriff must explain to the person (if present in court) in ordinary language the effect of the order.
- (12) But failure to comply with subsection (11) does not affect the order’s validity.

### **53 Content of order**

- (1) A football banning order is an order which—
- (a) prohibits the person against whom it is made from entering any premises for the purposes of attending any regulated football matches in the United Kingdom; and
  - (b) requires the person against whom it is made to report at a police station in accordance with this Chapter, in connection with regulated football matches outside the United Kingdom.
- (2) A football banning order must require the person against whom it is made—
- (a) to report initially at a police station in Scotland specified in the order within 5 days beginning with the day on which the order is made; and
  - (b) where a relevant event occurs, to notify the football banning orders authority of the prescribed information in relation to the event within 7 days beginning with the day on which the event occurs.
- (3) A football banning order must, unless it appears to the court making it that there are exceptional circumstances, impose a requirement as to the surrender in accordance with this Chapter, in connection with regulated football matches outside the United Kingdom, of the person’s passport.

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- (4) A football banning order may, if the court making it considers it would help to prevent violence or disorder at or in connection with any football matches, impose on the person additional requirements.
- (5) Such requirements may include prohibiting the person from entering any premises (including premises to be entered for the purposes of attending football matches which are not regulated football matches).
- (6) A football banning order must specify the period for which it is to have effect.
- (7) That period is not to exceed—
  - (a) 10 years, in the case of an order made under section 51 made in addition to a sentence of imprisonment;
  - (b) 5 years, in the case of an order made under section 51 other than one mentioned in paragraph (a);
  - (c) 3 years, in the case of an order made under section 52.

#### **54 Section 53: supplementary**

- (1) Schedule 5, which specifies the relevant events referred to in section 53(2)(b) and defines the prescribed information in relation to each such event, has effect.
- (2) The period specified in a football banning order by virtue of section 53(6) begins on the day on which the order is made.
- (3) In section 53(7)(a), “imprisonment” includes any form of detention.

#### **55 “Football matches” and “regulated football matches”**

- (1) In this Chapter, references to football matches—
  - (a) are to association football matches; and
  - (b) are to matches played or intended to be played.
- (2) For the purposes of this Chapter, the following are regulated football matches—
  - (a) football matches within subsection (3); and
  - (b) such other football matches, anywhere in the world, as may be prescribed by order made by the Scottish Ministers.
- (3) The football matches within this subsection are—
  - (a) football matches anywhere in the United Kingdom where one or both of the participating teams—
    - (i) represents a country or territory;
    - (ii) represents a club which is for the time being a member of the Scottish Premier League or the Scottish Football League;
    - (iii) represents a club which is for the time being a member (whether a full or associate member) of the Football League, the Football Association Premier League, the Football Conference or the League of Wales;
  - (b) football matches outside the United Kingdom involving—
    - (i) a national team appointed to represent Scotland, England or Wales by, respectively, the Scottish Football Association, the Football Association or the Football Association of Wales;
    - (ii) a team representing a club mentioned in paragraph (a)(ii) or (iii).

- (4) The Scottish Ministers may by order modify subsection (3) so as to—
- (a) add a description of football matches, anywhere in the world;
  - (b) remove such a description;
  - (c) amend such a description.

## 56 “Violence” and “disorder”

- (1) This section applies for the purposes of this Chapter.
- (2) “Violence” means violence against persons or intentional damage to property and includes—
- (a) threatening violence; and
  - (b) doing anything which endangers the life of a person.
- (3) “Disorder” includes—
- (a) stirring up hatred against a group of persons based on their membership (or presumed membership) of a group defined by reference to a thing mentioned in subsection (5), or against an individual as a member of such a group;
  - (b) using threatening, abusive or insulting words or behaviour or disorderly behaviour;
  - (c) displaying any writing or other thing which is threatening, abusive or insulting.
- (4) In subsection (3)(a), “presumed” means presumed by the person doing the stirring up.
- (5) The things referred to in subsection (3)(a) are—
- (a) colour;
  - (b) race;
  - (c) nationality (including citizenship);
  - (d) ethnic or national origins;
  - (e) membership of a religious group or of a social or cultural group with a perceived religious affiliation;
  - (f) sexual orientation;
  - (g) transgender identity;
  - (h) disability.
- (6) In subsection (5)—
- “disability” means physical or mental impairment of any kind;
- “religious group” has the meaning given by section 74(7) of the Criminal Justice (Scotland) Act 2003 (asp 7);
- “transgender identity” means any of the following—
- (a) transvestism;
  - (b) transsexualism;
  - (c) intersexuality;
  - (d) having, by virtue of the Gender Recognition Act 2004 (c. 7), changed gender.

*Variation, termination, information and appeals***57 Variation of certain requirements of order**

- (1) The appropriate court may, on the application of a person mentioned in subsection (3), make an order varying a football banning order by—
  - (a) subject to subsection (2), omitting or imposing a requirement such as is mentioned in section 53(3);
  - (b) imposing, replacing or omitting a requirement such as is mentioned in section 53(4).
- (2) An order may not be varied so as to omit a requirement such as is mentioned in section 53(3) unless it appears to the court that there are exceptional circumstances.
- (3) The persons referred to in subsection (1) are—
  - (a) the person subject to the order;
  - (b) the chief constable of the police force in the area of which the person subject to the order resides;
  - (c) a chief constable who believes that that person is in or is intending to come to the area of the chief constable's police force;
  - (d) where the order was made under section 52, the chief constable on whose application the order was made.
- (4) In subsection (1), "the appropriate court" means—
  - (a) where the football banning order was made under section 51, the court which made the order;
  - (b) where the football banning order was made under section 52, an appropriate sheriff.
- (5) In subsection (4), "an appropriate sheriff" means—
  - (a) a sheriff sitting in the original sheriff court district; or
  - (b) where such a sheriff remits the application to another sheriff court district, a sheriff sitting in that other district.
- (6) In subsection (5), "the original sheriff court district" means the sheriff court district which the sheriff who made the football banning order was sitting in when the order was made.

**58 Termination of order**

- (1) The appropriate court may, on the application of a person subject to a football banning order, make an order terminating it as from a specified date.
- (2) An application under subsection (1) may not be made unless the order has had effect for at least two-thirds of the period specified in the order.
- (3) In exercising its power under subsection (1), a court must have regard to—
  - (a) the character of the person against whom the order was made;
  - (b) the conduct of the person against whom the order was made since it was made;
  - (c) the nature of the offence or conduct which led to it; and
  - (d) any other circumstances which appear to the court to be relevant.

- (4) Where an application under subsection (1) is refused, no further application under that subsection in respect of the same order may be made within the period of 6 months beginning with the day of the refusal.
- (5) In subsection (1), “the appropriate court” has the same meaning as in section 57.

## **59 Information about making, varying or terminating order etc.**

- (1) Where a court makes a football banning order, it must cause a copy of the order to be—
- served on the person against whom the order is made;
  - sent to the football banning orders authority and to any person prescribed by order by the Scottish Ministers as soon as is reasonably practicable;
  - sent to the police station at which the person against whom the order is made is to report initially (addressed to the constable responsible for the police station) as soon as is reasonably practicable; and
  - in a case where the person against whom the order is made is detained in legal custody, sent to the person in whose custody that person is detained as soon as is reasonably practicable.
- (2) Where a court terminates or varies a football banning order, it must cause a copy of the terminating or varying order to be—
- served on the person against whom the football banning order was made;
  - sent to the football banning orders authority as soon as is reasonably practicable; and
  - in a case where the person against whom the order was made is detained in legal custody, sent to the person in whose custody that person is detained as soon as is reasonably practicable.
- (3) Where a person subject to a football banning order (“the subject”) is released from custody, the person in whose custody the subject is must give notice of the subject’s release to the football banning orders authority as soon as is reasonably practicable.
- (4) Subsection (3) applies only if the subject is released more than 5 days before the expiry of the football banning order.

## **60 Appeals**

- (1) The following are to be taken to be a sentence for the purpose of an appeal—
- a football banning order made under section 51;
  - a declaration made under section 51;
  - any variation of such an order under section 57;
  - the termination of such an order under section 58.
- (2) Subsection (3) applies where a football banning order made under section 51 is quashed on appeal.
- (3) Where the High Court of Justiciary does not specify, as a reason for quashing the order, that the court which made the order erred in holding that the offence in respect of which the order was made was one to which section 51(4) applied, the High Court may, in addition to any other order which it makes, make a declaration that the offence was one to which that section applied.

- (4) The following decisions may be appealed to the sheriff principal—
  - (a) a decision to make a football banning order under section 52;
  - (b) a decision to make an order under section 57 varying such a football banning order;
  - (c) a decision to make an order under section 58 terminating such a football banning order;
  - (d) a decision not to make an order such as is mentioned in paragraph (a), (b) or (c).
- (5) An appeal under subsection (4) must be made within the period of 14 days beginning with the date on which the decision was made.
- (6) The decision of the sheriff principal on an appeal under subsection (4) may be appealed to the Court of Session.
- (7) An appeal under subsection (6) may be made only with the leave of the sheriff principal.
- (8) An application for leave to appeal under subsection (6) must be made within the period of 7 days beginning with the date of the sheriff principal's decision; and an appeal under that subsection must be made within the period of 7 days beginning with the date on which leave to appeal the sheriff principal's decision was given.

*Enforcement of order in relation to foreign matches*

**61 Foreign matches: reporting and other requirements**

- (1) The constable responsible for the police station at which a person subject to a football banning order reports initially may make such requirements of the person as are determined by the football banning orders authority to be necessary or expedient for giving effect to the football banning order, so far as relating to regulated football matches outside the United Kingdom.
- (2) Subject to section 64, if, in connection with any regulated football match outside the United Kingdom, the football banning orders authority is of the opinion mentioned in subsection (3) in relation to a person subject to a football banning order, the authority must cause the person to be served with a notice in writing under subsection (4).
- (3) That opinion is that requiring the person to report in accordance with a notice under subsection (4) is necessary or expedient in order to reduce the likelihood of violence or disorder at or in connection with the match.
- (4) A notice under this subsection is a notice requiring the person—
  - (a) to report at a specified police station at the time, or between the times, specified; and
  - (b) if the order imposes a requirement as to the surrender of the person's passport, to attend at a specified police station at the time, or between the times, specified and—
    - (i) if the person has a passport, to surrender it; or
    - (ii) if the person does not have a passport, to make a declaration to that effect.
- (5) In subsection (4), “specified” means specified in the notice.



- (6) The football banning orders authority may establish criteria for determining whether a notice under subsection (4) ought to be imposed on any person or on persons of a particular description.

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

- (1) A notice under section 61(4) may not require the person subject to the order to report or surrender the person's passport except in the control period in relation to—
- (a) a regulated football match outside the United Kingdom; or
  - (b) a designated external tournament which includes such matches.
- (2) In subsection (1)—
- “control period” in relation to a regulated football match outside the United Kingdom means the period—
- (a) beginning 5 days before the day of the match; and
  - (b) ending when the match is finished or cancelled;
- “control period” in relation to a designated external tournament means the period—
- (a) beginning 5 days before the day of the first football match outside the United Kingdom which is included in the tournament;
  - (b) ending when the last football match outside the United Kingdom which is included in the tournament is finished or cancelled;
- (but, for the purposes of paragraph (a), any football match included in the qualifying or pre-qualifying stages of the tournament is to be left out of account);
- “designated” means designated by the Scottish Ministers by order; and
- “external tournament” means a football competition which includes regulated football matches outside the United Kingdom.
- (3) Where a notice under section 61(4) requires the person subject to the order to surrender the person's passport, the passport must be returned to the person as soon as reasonably practicable after the control period in question.

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

- (1) The football banning orders authority must, in carrying out its functions under sections 61 and 62, have regard to any guidance issued by the Scottish Ministers about—
- (a) the carrying out of those functions; and
  - (b) matters arising in connection with the carrying out of those functions.
- (2) The Scottish Ministers shall make such arrangements as they consider appropriate for publishing the guidance issued from time to time for the purpose of subsection (1).

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

- (1) A person who is subject to a football banning order may—
- (a) as respects a particular regulated football match; or
  - (b) as respects regulated football matches played during a period,
- apply for an order disapplying any notice under section 61(4) served on the person in relation to the match or matches.

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- (2) Subject to subsection (3), an application under subsection (1) is to be made to the football banning orders authority.
- (3) If the application is made during the control period in relation to any match to which it relates, the application may instead be made to the constable responsible for any police station.
- (4) In subsection (3), “control period” is to be construed in accordance with section 62(2).
- (5) An order under this section is to be made only if the applicant shows to the satisfaction of the person to whom the application for the order is made—
  - (a) that there are circumstances which justify the making of the order; and
  - (b) that, because of those circumstances, the applicant would not attend the match or matches.
- (6) Except where subsection (7) applies, a constable is not to make an order under this section without referring the question of whether to do so to the football banning orders authority.
- (7) This subsection applies where it is not reasonably practicable for the constable to refer the question to the authority.
- (8) Where a constable makes an order under this section without referring the question of whether to do so to the football banning orders authority, the constable must give notice in writing of that fact to the football banning orders authority as soon as is reasonably practicable.

## **65 Section 64: supplementary**

- (1) The football banning orders authority or a constable is, in making decisions under section 64, to have regard to any guidance in that respect issued by the Scottish Ministers.
- (2) The Scottish Ministers shall make such arrangements as they consider appropriate for publishing the guidance issued from time to time for the purpose of subsection (1).
- (3) A person who is aggrieved by the refusal of the football banning orders authority or a constable to make an order under section 64 in the person’s favour may appeal that refusal to the sheriff.
- (4) An appeal under subsection (3) may be made only after the aggrieved person has given notice in writing of the intention to do so to—
  - (a) in the case of an appeal against a refusal by the football banning orders authority, that authority;
  - (b) in the case of an appeal against a refusal by a constable, the constable and the football banning orders authority.
- (5) An appeal under subsection (3) is to be made by summary application.
- (6) On an appeal under subsection (3) the sheriff may make such order as the sheriff thinks fit.
- (7) The sheriff’s decision on an appeal under subsection (3) is final.

## **66 Suspension of reporting requirements**

- (1) Any requirements imposed on the person subject to a football banning order (“the subject”) by a notice under section 61(4) are suspended during any period in which the subject does not reside in Scotland.
- (2) The requirements mentioned in subsection (3) are suspended during any period in which the subject is detained in legal custody.
- (3) Those requirements are—
  - (a) the requirement under the order to report initially at a police station; and
  - (b) any requirements imposed on the subject in a notice under section 61(4).
- (4) Subsection (5) applies if—
  - (a) the subject is released from custody more than 5 days before the expiry of the period for which the order has effect; and
  - (b) the subject was precluded by being in custody from reporting initially.
- (5) Where this subsection applies, the order is to have effect as if it required the subject to report initially at the police station specified in the order within the period of 5 days beginning with the date of the subject’s release.

### *Miscellaneous and general*

## **67 Service of documents**

- (1) A document required by this Chapter to be served on a person is served on the person if—
  - (a) given to the person; or
  - (b) sent to the person by registered post or a recorded delivery service.
- (2) A certificate of posting of a letter sent under subsection (1)(b) issued by the postal operator concerned is sufficient evidence of the sending of the letter on the day specified in the certificate.
- (3) In subsection (2), “postal operator” has the meaning given by section 125(1) of the Postal Services Act 2000 (c. 26).

## **68 Offences under this Chapter**

- (1) A person who fails to comply with any requirement imposed on the person—
  - (a) by a football banning order;
  - (b) under section 61(1); or
  - (c) by a notice under section 61(4),commits an offence.
- (2) It is a defence for a person charged with an offence under subsection (1) to prove that the person had a reasonable excuse for failing to comply with the requirement.
- (3) A person who commits an offence under subsection (1)(a) or (c) is liable on summary conviction to—
  - (a) imprisonment for a term not exceeding 6 months;
  - (b) a fine not exceeding level 5 on the standard scale; or

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- (c) both such imprisonment and such a fine.
- (4) A person who commits an offence under subsection (1)(b) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (5) A person who, in connection with an application under section 64 to be exempted from a notice under section 61(4)—
  - (a) knowingly or recklessly makes a statement which is false or misleading in a material particular; or
  - (b) knowingly or recklessly produces, furnishes, signs or otherwise makes use of a document which is false or misleading in a material particular,commits an offence.
- (6) A person who commits an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

## **69 Interpretation of Chapter 1**

- (1) In this Chapter—
  - “the football banning orders authority” means the chief constable of the police force maintained for the Strathclyde combined police area; and
  - “passport” means a United Kingdom passport within the meaning of the Immigration Act 1971 (c. 77).
- (2) The Scottish Ministers may by order modify the definition of “the football banning orders authority” in subsection (1).