

JUSTICE ACT (NI) 2011 – FOOTBALL BANNING ORDER PROVISIONS – GENERAL GUIDANCE

Purpose of this Guidance Note

1 This guidance note covers the football banning order provisions of the Justice Act (Northern Ireland) 2011 – sections 41 to 49, which together form Chapter 4 of Part 4 of the Act. Part 4 deals with Sport. The purpose of this note is to provide a layman’s overview as general assistance to those preparing for the commencement and operation of those provisions.

2 This note should be read with the Act’s provisions, not instead of them. It is not intended as a statement of how the Act’s provisions will be interpreted by the courts in criminal proceedings.

Commencement of the Legislation

3 The Justice Act became law with the granting of Royal Assent on 4 May 2011. The football banning order provisions are to commence (come into force) with effect from 1 January 2012. A Commencement Order for that purpose was made on 21 October 2011 by the Department of Justice - the Justice (2011 Act) (Commencement No. 2) Order (Northern Ireland) 2011 (numbered “2011 No. 370 (C.26)”).

4 The other provisions in Part 4 of the Act (covering sport) were brought into force by separate Commencement Order on 1 August 2011. That Order is entitled “The Justice (2011 Act) (Commencement No. 1) Order (Northern Ireland) 2011”, and numbered “2011 No. 224 (C. 14)”.

Overview of Provisions

5 A banning order is an order made by a criminal court in response to the conviction of a person of a football-related criminal offence involving violence or disorder. It bans the person from attending a range of football matches in Northern Ireland for a period set by the court – at least 3 years and at most 10 years. It will be a criminal offence for a person to breach the terms of a banning order.

6 Though the banning order provisions themselves are contained in sections 41 to 49 of the Act, certain other provisions of the Act are also relevant. A banning order will prohibit a person from attending “regulated” association football matches in Northern Ireland. Regulated football matches in this context are defined by reference to section 35(1)(c) of the Act, which in turn refers to paragraphs 2 to 5 of Schedule 3 to the Act. For convenience, relevant provisions of that schedule are reproduced in **Annex A** to this note.

7 Note that the Act allows for banning orders to apply only in relation to regulated football matches played in Northern Ireland (section 35(1)(c)). This reflects the limits of the Assembly’s legislative authority. The Department is

exploring legislative options at Westminster to allow for Northern Ireland's banning orders to ban attendance at GB matches also, and vice versa.

8 In addition, section 50 of the Act provides police with qualified powers of entry to grounds and search of persons for the purpose of enforcing not only banning orders but also the Act's other sport provisions. The entry powers are limited to the "period of a regulated match" as defined in section 35(2) and (3) – essentially from one hour before kick-off to 30 minutes after the final whistle.

Detailed Banning Order Provisions

Section 41 : Banning orders : making on conviction

9 The only context in which a court considers whether a banning order should be made is where a person has been convicted of a criminal offence. (This is one of the main respects in which Northern Ireland's banning order law differs from that in Great Britain. There courts can also make a banning order upon the application of the police or Prosecution Service, without the need for an offence to have been committed.) In Northern Ireland under section 41 of the Justice Act, if two preconditions are met a court must make a banning order, otherwise it has no power to do so.

10 The first precondition is that the offence of which the person has been convicted comes, in the opinion of the court, within section 41(4). This requires that the offender, in committing the offence, has engaged in violence or disorder. It also requires that the offence was committed at a regulated match, or while entering or leaving the ground, or journeying to or from a regulated match, or otherwise where the offence seems to the court to have been motivated by a regulated match. "Violence" and "disorder" are defined in section 44 of the Act.

11 The second precondition is that the court is reasonably satisfied that making a banning order against the offender would help to prevent violence or disorder around regulated matches.

12 If the court is satisfied that precondition 1 is met, but not precondition 2, the judge must say so in open court and give reasons.

13 A banning order may only be made in addition to a sentence imposed or to a conditional discharge for the offence concerned. If the offender is given an absolute discharge for the offence, the court cannot impose a banning order.

14 A banning order is not strictly a "sentence", but the banned person is entitled to appeal against the banning order in the same way that appeal against sentence is allowed. The banning order remains in force until and unless an appeal against the imposition of the order itself succeeds.

15 The courts' powers to make banning orders apply only where the trigger offence was committed after the banning order provisions come into effect, ie after 1 January 2012 (see paragraph 3 of Schedule 6 to the Act).

Section 42 : Banning orders : content

16 This section says what a banning order is and what happens procedurally once one is made.

17 A banning order is defined as a court order which prohibits a person from entering any premises for the purposes of attending regulated matches. Section 46 of the Act allows for banning orders to place additional requirements on the banned person.

18 When a court makes a banning order, it must explain the effect of the order to the person in ordinary language.

19 The order must require the person to report to a named police station within five days. (Unlike GB, Northern Ireland's law does not provide for banned persons to be required to report to police stations at other times, or to surrender passports, to frustrate attendance at regulated matches.) If the person is being held in custody at the time the banning order is made, the requirement to report to a police station is deferred until the person is released.

20 In practice, for enforcement purposes, the police will wish to ensure that they have a photograph of each banned person and that the other information they hold about the subject is accurate and up-to-date. They will circulate photographs as necessary and appropriate.. They will also make sure that the person fully understands the restrictions set out in the banning order.

21 Another element of the banning order is that it must require the person to notify the police of any subsequent change of the person's names or address, or where the person appeals against the banning order or applies for the order to be terminated before its full period expires. (Section 47 of the Act provides for the early termination of orders after two thirds of the order's set duration have elapsed.) Notification must take place within 7 days of the change, appeal or application.

Section 43 : Banning orders : supplementary

22 This section sets out procedures for the court to adjourn proceedings for its consideration of banning orders, and for the prosecution to appeal against a court's failure to make a banning order.

23 The court may adjourn its consideration of the necessity for a banning order, even after it has sentenced the person. The person may be remanded during this adjournment, and the conditions of bail (if granted) may require the person not to leave Northern Ireland before the case is resumed.

24 The prosecution has the right to appeal to a higher court against the failure of a court to make a banning order.

Section 44 : Banning orders : “violence” and “disorder”

25 For the purposes of the Act’s banning order provisions, “violence” means violence against either persons or property. It includes threats of violence and putting anyone’s life in danger.

26 In addition, “disorder” is intended to include a range of specified behaviours (but not necessarily excluding others like them). These cover stirring up sectarian hatred or hatred against a group of people defined by reference to, for example, race, religious belief, sexual orientation or disability. Also covered are the use of threatening, abusive or insulting words or actions, disorderly behaviour, and displaying any written or other thing which is threatening, abusive or insulting. None of these terms is further defined in the Act. It will therefore be for the courts to interpret them for application in individual cases.

Section 45 : Banning orders : duration

27 This sets out the minimum and maximum periods within which courts must set the duration of each banning order. Where the offender is given a jail sentence (other than a suspended jail sentence) the banning order must be for a period between 6 and 10 years. Otherwise, the minimum is 3 years and the maximum is 5 years.

Section 46 : Banning orders : additional requirements

28 This allows the courts, if they think fit, to impose additional requirements on the person. In addition, this section allows the courts, upon application by the offender or the prosecution, to vary a banning order to as to amend or remove existing additional requirements, or to add new ones.

29 The section does not limit the sort of additional requirements that can be imposed with banning orders. Under equivalent powers, banning orders in England have included requirements such as not to go within one mile of a specified stadium at match times, and not to be in the town in which, and at the time that, away matches are taking place.

Section 47 : Termination of banning orders

30 This section provides for a court to terminate a banning order before the full term it set originally.

31 Once at least two thirds of the period set for the duration of a banning order have elapsed, the person subject to it may apply to the court that made the order to have it terminated. In considering such an application, the court is obliged to have regard to certain factors, ie the person’s character, conduct since the banning order was made, the nature of the trigger offence and any other circumstances that appear to the court to be relevant.

Section 48 : Information about banning orders

32 This provides for the court to send a copy of each banning order and terminating order to specified individuals. It also provides for the police to be informed, if necessary, about the release from custody of a person who is subject to a banning order.

33 When a court makes a banning order, a court officer is required to give a copy of it to the offender, and send one to the Chief Constable, to the police station at which the offender is to report, and (where the offender is being held in custody) to the person thus holding the offender.

34 In addition, the court officer must send a copy of the banning order to any other person “prescribed” (specified) in an order made by the Department of Justice. These copying requirements (except copying to a police station) apply also to any order made by the courts to terminate a banning order under section 47 of the Act. The arrangements are mainly to ensure that those who need to be informed for the purposes of assisting with the enforcement of banning orders have the appropriate information. The courts will therefore also copy to the same recipients any variation of a banning order made under section 46(2) (imposing, replacing or omitting any additional requirements).

35 Enforcement will be the responsibility of the police. However, they will also wish to have the assistance of those who organise regulated matches to identify anyone attempting to attend such matches in contravention of a banning order. The Department has therefore prescribed by Order the Chief Executives of the IFA and Derry City Council. These may then copy the information to relevant clubs. (See The Banning Orders (Prescribed Persons) Order (Northern Ireland) 2011, numbered “SR 2011 No. 405”.)

Section 49 : Failure to comply with banning order

36 This makes failure to comply with a banning order a criminal offence. The offence is triable only in a magistrates’ court, and on conviction an offender may be sentenced to a maximum of:

- 6 months’ imprisonment; or
- a level 5 fine (currently £5,000); or
- both.

**Criminal Law Branch
Department of Justice
Knockview Buildings
Stormont Estate
BELFAST
BT4 3SL**

Phone 028 9052 3174

December 2011

RELEVANT PROVISIONS OF SCHEDULE 3 TO JUSTICE ACT (NI) 2012

SCHEDULE 3 : REGULATED MATCHES

1 In this Schedule—

“the IFA” means the Irish Football Association;

“the FAI” means the Football Association of Ireland;

“FIFA” means the Fédération Internationale de Football Association;

“member” includes a full or associate member;

“UEFA” means Union des Associations Européennes de Football.

Association football

2 This paragraph applies to an association football match in which one or both participating teams represents a country or territory.

3 This paragraph applies to an association football match in which one or both participating teams represents a club which is for the time being a member of—

- (a) the IFA Premiership,
- (b) the IFA Championship,
- (c) the FAI Premier League, or
- (d) the FAI First Division.

4 This paragraph applies to an association football match in which one or both participating teams represents a club which is for the time being a member of—

- (a) the Football League,
- (b) the Football Association Premier League,
- (c) the Football Conference,
- (d) the Welsh Premier League,
- (e) the Scottish Premier League, or
- (f) the Scottish Football League.

5 This paragraph applies to an association football match—

(a) in which one or both participating teams is a member of, or affiliated to, a national football association which is a member of FIFA; and

(b) which is part of a competition or tournament organised by, or under the authority of—

- (i) FIFA, or
- (ii) UEFA.