

## **Football Related Provisions within the Violent Crime Reduction Act 2006 – Guidance**

This Guidance Note relates to amendments to Football Disorder legislation within sections 52 and 53 of the Violent Crime Reduction Act 2006. Further Home Office guidance on football related legislation can be found in HO Circular 34/2000. Comprehensive consolidated guidance on all extant football related legislation is currently being prepared for publication this year in a 'living document' format.

**Overall purpose of the Act** – Refinements improving upon the football banning order legislation (introduced in the wake of the disorder in Belgium during Euro 2000) that is integral to the successful football disorder strategy. The changes reflect six years of government, police and courts experience and consultation with the police, CPS and other partner agencies.

Football related provisions within the Violent Crime Reduction Act become effective from the 6<sup>th</sup> April 2007.

The provisions apply to existing football banning orders and to acts committed or prosecutions instigated from 6<sup>th</sup> April.

### **Summary of Amendments**

Below is a brief summary of the key changes. Please refer to the rest of the document for more detail.

- Courts are empowered to impose bail conditions on a 14B application.
- The prosecution is able to appeal against a court's non-imposition of a ban.
- Any Chief Officer is able to make a 14B application irrespective of residence.
- The Crown Prosecution Service are empowered to make 14B applications.
- The Football Banning Orders Authority (FBOA) must be notified within 7 days of any change of address, name or passport details.

- The FBOA must be notified of any appeal against the imposition of a football banning order or an application for termination of an order.
- Courts are no longer able to remove the passport surrender requirement when issuing a ban.
- The duration of a 14B order becomes 3 – 5 years.
- Documentation or reporting requirements sent 1<sup>st</sup> class post by the FBOA are deemed served.
- All section 4A Public Order Act offences become Schedule 1 offences.
- Ticket touting offence amended to make it an easier offence to prove and to include sales on the internet and advertising unauthorised tickets for sale.

Section 52(1) Removes the existing time limitation (s5(2) of the Football (Disorder) Act 2000) on two key banning order measures:

- section 14B football banning order on complaint; and
- associated summary police powers activated during control periods (the period commencing 5 days prior to an overseas match or tournament and concluding at the end of the (final) match).

These measures are integral to the success of the banning order legislation and the wider football disorder strategy. They were due to expire on 27 August 2007 but are now enshrined on the statute book.

S52(2) Gives effect to **Schedule 3** of the Act which amends provisions of the Football Spectators Act 1989 relating to football banning order legislation – see notes on schedule 3 below).

S52(3) Removes from the statute book sections 2 to 7 of the Football Spectators Act 1989 that made provision for the setting up of a National Membership Card Scheme which would (if implemented) restrict attendance at football matches to members of a national membership scheme.

Individual clubs are still able to operate their own home and/or away ticket membership scheme on public order or other grounds, however such a decision will remain a matter for each club to determine in consultation with their local police force.

The rationale behind this change is that the cornerstone of the multi-agency football disorder strategy is based on excluding known troublemakers, whilst encouraging a wider cross section of persons to attend matches, to help make football crowds more representative of the areas in which clubs are located.

### **Schedule 3: Amendments to provisions of the Football Spectators Act 1989 relating to football banning orders.**

#### **Paragraph 2 of Schedule 3**

- Paragraph 2(1) inserts new subsections (4BA) and (4BB) into section 14A of the Football Spectators Act 1989. These enable the court to remand the offender when proceedings for an order under section 14A are adjourned, and to impose bail conditions preventing the individual from leaving England and Wales until court proceedings are finalised. Paragraph 2(3) inserts new subsections (5) and (6) into section 14B of the Act which provide for the same in relation to an adjourned section 14B hearing.

Effect: Courts are empowered to impose bail conditions in respect of banning order proceedings if and when the proceedings are adjourned.

Such adjournments can be long and there was previously no provision enabling the court to impose restrictions on the individual's attendance at domestic matches or travel to overseas matches. A decision on whether or not to impose such conditions will be entirely at the discretion of the court. A similar provision already exists in respect of section 14B hearings initiated after service of a notice under section 21B.

### **Paragraph 3**

- Paragraph 3(1) inserts three new subsections into section 14A of the Act which allow the prosecution to appeal against a failure by the court to impose a banning order on an individual convicted of a relevant offence. Paragraph 3(2) inserts new subsection (1A) into section 14D, providing a right of appeal for the applicant against the dismissal by a magistrates' court of an application for a banning order under section 14B. The appeal lies to the Crown Court.

Effect: The prosecution now has a right of appeal so that redress can be sought in circumstances when the court has decided not to impose an order (either following conviction of a football related offence or on complaint).

This measure is intended to be used in circumstances where the evidence adduced strongly suggests that a banning order is justified in order to prevent an individual from causing or contributing to violence and disorder in connection with football matches played at home or abroad.

### **Paragraph 4**

- Paragraph 4 amends section 14B to extend the scope for chief officers of police to apply for a section 14B football banning order by removing the limitation as to area of residency of the subject. It also provides a power for the Director of Public Prosecutions to apply for a section 14B order.

Effect: Any chief officer of police (including British Transport Police) is able to make an application for a banning order on complaint.

Previously scope was limited to the chief officer of police in the area where the respondent lives. However, patterns of misbehaviour by football troublemakers are often concentrated in the area where the team they support is located or, in some cases, on the public transport system.

This measure is consistent with the targeted approach of using the legislation and will ensure that cases against offenders are prepared and presented by the local force in possession of all the available evidence.

- Provision is also made for the Director of Public Prosecutions to authorise Crown Prosecutors to make an application for a football banning order on complaint.

Effect: At present, local forces have to appoint a solicitor to represent the chief police officer in a hearing. However, in some circumstances, CPS prosecutors experienced and expert in application of the legislation will be better placed to assist the court determine whether or not to impose a banning order. This amendment is about providing options – a decision on who should adduce evidence is for police and CPS to resolve at a local level.

One area where CPS may be better placed to prosecute centres on applications based on evidence of misbehaviour gathered overseas, in particular where evidence includes a judicial or administrative decision in the country where the misbehaviour occurred. At present, the court will not always have at its disposal clarification on overseas judicial and administrative processes that are relevant to an application.

In such cases, the court stands to benefit if the application is pursued by a Crown Prosecutor who has a clear understanding of the judicial system in the country concerned, and details of the decision or hearing relating to the individual's behaviour.

## **Paragraph 5**

- Paragraph 5 amends section 14E to make it a condition of all banning orders that individuals subject to a ban are required to notify the enforcing authority (FBOA) of any relevant change in personal circumstance that would make it more difficult for the enforcing authority to monitor and administer banning orders (see also paragraph 7).

Effect: Requires individuals subject to orders to notify the FBOA within 7 days of the details of any change in their:-

- name,
- address, or
- passport (travel authorisation) details.

This ensures individuals subject to orders are unable to avoid (intentionally or otherwise) compliance with the conditions of their order because of such a change.

- Paragraph 5 also requires a banning order subject to notify the FBOA in respect of any appeal against imposition of an order (or imposition of a condition attached to the order) or an application for termination of an order.

Effect: This will ensure that the enforcing authority (FBOA) is aware of developments and able to arrange for the relevant police contacts to adduce any relevant evidence.

- Paragraph 5(3) and (4) amends s14E(3) and omits s14E(4) to remove the option of a court to remove the passport surrender requirement when issuing an individual's banning order.

Effect: All newly issued football banning orders shall automatically include a requirement upon the subject to surrender their passport in accordance with Part 2 of the 1989 Act in connection with regulated matches outside the UK.

There is already plenty of scope for the FBOA to exempt individuals from the condition on a case by case basis. If persons subject to a banning order wish to travel abroad during a period when they are required to surrender their passport then they can apply under s20 to the FBOA or, in exceptional cases, to police for exemption from the requirement.

If the enforcing authority/police refuse to grant an exemption it is open to the individual to appeal to the Magistrates' Court so ensuring there remains some element of judicial control over the removal of the ability to travel.

## **Paragraph 6**

- Paragraph 6 amends s14F(5) by changing the duration for a banning order made on complaint (under s14B) to be between 3 and 5 years.

Effect: Banning orders imposed under s14B will last for a minimum of 3 years and a maximum of 5 years, rather than a minimum of 2 years and a maximum of 3 years.

This change reflects the police use of the complaint process to seek banning orders on serious and persistent offenders (particularly those who misbehave overseas). The current period is insufficient as the order may expire before there has been sufficient time to ascertain whether the risk posed by the individual has been reduced. Increasing the minimum period to 3 years is designed to ensure that the subject is banned for the next football championships in the 2 year cycle of European and World Cup finals.

The new time periods are consistent with those available to the court following conviction of a football-related offence (when the individual has not been given a prison sentence). The ability of any subject to seek termination of an order after two-thirds of its period will remain in place.

There is no intention to reduce the minimum length of a football-banning order. Banning orders are crucial to preventing persons prepared to engage in violence or disorder from continuing their cycle of misbehaviour. The banning order concept is not designed to redress minor offences where no further risk is posed.

### **Paragraph 7**

- s19 amended to require the subject of a banning order to notify the enforcing authority if they will be staying at a different address during a control period.

Effect: This will enable the FBOA to ensure that notices sent to the individual requiring him or her to report to a designated police station are received and prevent the individual from acting in breach of the order - which is a criminal offence.

### **Paragraph 8**

- section 25 amended to make it explicit that documents (e.g. reporting and other instructions issued by the FBOA) are deemed to have been served if sent by 1st class post.

Effect: It is a common defence plea in breach hearings that documents were not received. Similarly, some individuals refuse to accept recorded delivery letters. This provision is similar to that included in ASBO arrangements.

### **Paragraph 9**

- Schedule 1 to the 1989 Act amended to explicitly include section 4A Public Order Act 1986 offences (using threatening behaviour etc with intent to cause harassment, alarm or distress).

Effect: All s4A Public Order Act 1986 offences included in the schedule of offences that can be designated as football-related for banning order purposes, if conviction relates to offences committed in connection with football.

The Football Spectators Act 1989 (as amended) includes a schedule of offences that if committed in connection with a football match (any place within 24 hours either side of a match) oblige the court on conviction to consider making a football banning order. The Schedule includes football-specific offences, like throwing missiles or invading the pitch, but is largely composed of generic criminal offences that can be designated as football

related if committed in connection with football at any place within 24 hours either side of the match. This reflects the character of football disorder which often involves violence and disorder occurring outside of grounds.

Previously s4A offences were only included when the offence involved the use or threat of violence. This meant convictions for s4A offences involving threatening or abusive words or behaviour, or disorderly behaviour, did not automatically prompt a football banning order hearing. This was inconsistent – conviction for football related s5 Public Order Act offences (causing harassment, alarm or distress) automatically prompt a football banning order hearing. S4A offences are just as serious, if not more so, as the offence is intended to cover behaviour that causes fear or provokes violence, and as a feature of football disorder it should be covered by the legislation.

## **Amendment to Section 166 of the Criminal Justice and Public Order Act 1994**

### **Ticket Touting**

Section 53 of the Violent Crime Reduction Act 2006 refines and improves upon the current legal basis for prosecuting ticket touts in connection with the sale of unauthorised football match tickets. The amendment covers ticket touting on the internet. The aim of this is to redress current inconsistencies and gaps in the ticket touting laws that apply to football matches. The motivation here is public order rather than commercial considerations.

The ticket touting legislation contained in section 166 of the Criminal Justice and Public Order Act 1994 is a public order provision explicitly applied to football in view of the importance in segregating rival fans in order to reduce the potential for disorder.

The powers bestowed by s166 have always been used in a proportionate and targeted way by the police when they fear that public order risks are being increased by ticket touts compromising the segregation of opposing fans through unauthorised ticket sales.

To capture the internet, it is necessary in accordance with the EU Directive on Electronic Commerce, to incorporate the provisions set out in s166A which clarify the circumstances in which a service provider may be guilty of an offence. Section 166A provides supplementary provisions to ensure that the amendment on internet ticket sales is compliant with European legislation on electronic commerce. As such section 166A is consequential to s166.

### **Internet**

The existing gap centred on the definition of “public place or a place to which the public has access” which meant that ticket touting on the internet was not covered. The amendment redresses this issue by removing reference to the physical location of the sale or disposal.

The Act's territoriality extends only to England and Wales. However, one or more parts of the chain of an internet ticket touting transaction for a regulated match will probably occur within the Act's coverage e.g. the physical location of the financial transaction between seller and buyer, a third party passing the ticket to the seller.

This amendment is designed to prevent significant breakdowns in crowd segregation at football matches through ticket touting on the internet. As is the case in respect of police use of the current provisions, these measures will be used in targeted way.

### **Unauthorised Practices**

Ticket Touts practices have evolved to find ways around the law. For example;

- offering an item of nominal value (such as a pen or scarf) plus a "free" match ticket at an inflated price,
- offering unauthorised hospitality-style packages with ticket included - which are merely ticket touting with a further expensive service tacked on,
- offering tickets in exchange for other goods or services.

The amendment stops such practices and also makes it an offence:-

- to advertise the availability of tickets for unauthorised sale
- for an individual or agency to make available a ticket for sale by another - this is to target those who supply unauthorised tickets to touts.

Reference to sale in the course of a trade or business has been removed, as this is not a concern from a public order perspective.

### **Disposal**

The powers bestowed by s166 have always been used in a proportionate and targeted way by the police when they fear that public order risks are being increased by ticket touts compromising the segregation of opposing fans through unauthorised ticket sales.

In making the law clearer, through the inclusion of "*or otherwise to dispose of such a (unauthorised) ticket to another person*", the amendment will not change the status quo in respect of genuine supporters sharing or purchasing a group of tickets for friends or family.

The key to whether ticket exchange and sharing is caught by s166 has always depended upon the terms and conditions imposed by the match organiser when the ticket is purchased. These terms and conditions must specify any

activities which are unauthorised in order for s166 to apply. For example, if the ticket is deemed as non-transferable then someone who passes a ticket on to a family member or friend is technically committing an offence if money changes hands (i.e. reimbursement to the actual purchaser for the actual cost of the ticket etc). The police have not and would not prosecute anyone for such a breach unless it was part of an orchestrated pattern which was felt to pose a public order risk, or if the individual was knowingly selling the ticket to a known troublemaker, particularly one subject to a football banning order.

Ensuring ordinary fans are not even theoretically criminalised centres on the terms and conditions of the ticket sale. It is that which determines whether the transaction involves an "authorised ticket". Home Office officials have been working closely with the football authorities to address this issue. The football authorities are supportive of the Act's measures and share our views about the desirability of clarifying the basis on which tickets can innocently be shared or sold-on etc. and circumstances where an individual buys an allocation of more than one ticket for friends and/or family.

The football authorities are coordinating their activities to ensure that such ticketing practices are permitted through defining the practices as authorised in standard terms and conditions for ticket sales. They are currently liaising about the exact terminology with a view to the arrangements being standardised for 2007/8 season irrespective of whether the match concerned is a Premier League, Football league, FA Cup or Football League Cup match, or a UEFA Club Competition match.

### **Impact**

The aim throughout is to empower the police to act against ticket touting in circumstances where the activity increases public order risks through a breakdown in the segregation of rival fans.

As far as Government and the police are concerned (and it is the police who enforce the legislation), there will continue to be common-sense application of ticket-touting law. Genuine fans have nothing to fear and much to gain from the new arrangements.