



# 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.

---

*Status: This is the original version (as it was originally enacted).*

---

- (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.

---

*Status: This is the original version (as it was originally enacted).*

---

- (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.

---

*Status: This is the original version (as it was originally enacted).*

---

- (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.

---

*Status: This is the original version (as it was originally enacted).*

---

- (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

---

*Status: This is the original version (as it was originally enacted).*

---

- (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).

## **CHAPTER 2**

### PUBLIC PROCESSIONS

## **70 Notification of public processions**

- (1) Section 62 of the Civic Government (Scotland) Act 1982 (c. 45) (giving notice of proposal to hold public processions) (“the 1982 Act”) is amended in accordance with subsections (2) to (8).
- (2) In subsection (2)—
  - (a) in paragraph (a), for “7” there is substituted “28”;
  - (b) in paragraph (b), for “7” there is substituted “28”.
- (3) In subsection (4), for “7” there is substituted “28”.
- (4) In subsection (5), for “specify” to “above”, where secondly occurring, there is substituted—
  - “(a) set out the reason why notice of the proposal was not given in accordance with subsections (1) and (2) above; and
  - (b) specify the matters mentioned in subsection (3) above,”.
- (5) Subsections (6), (7) and (8) are repealed.
- (6) In subsection (9), the words “or making, varying or revoking an order under subsection (6) or (7) above” are repealed.

(7) Subsection (11) is repealed.

(8) After subsection (11) there is inserted—

“(11A) A local authority shall, as soon as possible after making an order under subsection (4) above, publicise that fact in such manner as they think fit and send a copy of the order to the applicant.

(11B) This section does not apply to a procession—

- (a) which is a funeral procession organised by a funeral director acting in the ordinary course of his business; or
- (b) which is specified in, or is within a description specified in, an order made by the Scottish Ministers.

(11C) In subsection (11B) above, a “funeral director” is a person whose business consists of or includes the arrangement and conduct of funerals.

(11D) An order made for the purposes of subsection (11B)(b) above shall be made by statutory instrument subject to annulment in pursuance of a resolution of the Scottish Parliament.”.

## **71 Powers and duties of local authorities**

(1) Section 63 of the 1982 Act (councils' functions in relation to processions) is amended as follows.

(2) Subsection (2) (which specifies some kinds of conditions which may be imposed on the holding of a procession) is repealed.

(3) At the end there are inserted the following subsections—

“(5) The local authority may, after consulting the chief constable and (where section 62(1)(aa) of this Act applies) the National Parks Authority, make an order—

- (a) imposing conditions on the holding of a procession to which paragraph (a) of subsection (11B) of section 62 of this Act relates;
- (b) prohibiting or imposing conditions on the holding of a procession to which paragraph (b) of that subsection relates.

(6) Subsections (1A), (3) and (4) above apply in relation to an order made under subsection (5) above and to a decision not to make an order under that subsection as they apply to an order under subsection (1) above and to a decision not to make an order under that subsection respectively, but with the modifications set out in subsection (7) below.

(7) Those modifications are—

- (a) the references to notice having been or falling to be treated as having been given shall be ignored;
- (b) the reference to the person who gave the notice shall be treated as a reference to the person appearing to the local authority to be the person who is to hold the procession; and
- (c) the words “not to make an order under subsection (1) above or” in subsection (3)(a)(ii) shall be ignored.

---

*Status: This is the original version (as it was originally enacted).*

---

- (8) The considerations to which the local authority shall have regard when deciding whether to prohibit the holding of a procession or impose conditions on it under this section shall include—
- (a) the likely effect of the holding of the procession in relation to—
    - (i) public safety;
    - (ii) public order;
    - (iii) damage to property;
    - (iv) disruption of the life of the community;
  - (b) the extent to which the containment of risks arising from the procession would (whether by itself or in combination with any other circumstances) place an excessive burden on the police;
  - (c) where the person proposing to hold the procession has previously held one in the area of the authority or the persons likely to take part in the procession, or some of them, are the same persons as took part in one previously held in that area, or some of them—
    - (i) whether the previous procession was held in breach of a prohibition under this section on its being held or of a condition so imposed on the holding of it;
    - (ii) whether any guidance or code of conduct issued by the authority as to the holding of the previous procession or as to the holding of processions generally was followed; and
    - (iii) the effect of the previous procession in relation to the matters mentioned in sub-paragraphs (i) to (iv) of paragraph (a) above and in paragraph (b) above.
- (9) The local authority shall compile, maintain and make available to the public, free of charge, a list containing information about—
- (a) processions which have, after the coming into force of this subsection, been held in their area;
  - (b) proposed processions which they have, after that time, prohibited under this section.
- (10) A local authority shall make sufficient arrangements to secure that any person, body or other grouping resident in or otherwise present in their area who makes a request for the purposes of this subsection is enabled to receive information about processions which are to or might be held in that area or in any part of it specified in the request.”.

## 72 Minor amendments of 1982 Act

- (1) In section 64(6)(a)(ii) of the 1982 Act (sheriff’s powers on appeal against order under section 63)—
  - (a) for “vary” there is substituted “quash”;
  - (b) after “appeal” there is inserted “, vary it”;
  - (c) after “make” there is inserted “in substitution for the order”.
- (2) In section 65 of that Act (offences and enforcement)—
  - (a) in subsection (1), in paragraph (a)—
    - (i) for “without” there is substituted “not”;

- (ii) sub-paragraph (ii) and the word “and” immediately preceding it are repealed;
- (b) in subsection (2), paragraph (a)(ii) and the word “and” immediately preceding it are repealed;
- (c) for subsection (3), there is substituted—
  - “(3) This section applies to a procession of the description set out in section 62(11B)(a) of this Act (funeral processions) only to the extent that the procession has been held otherwise than in accordance with conditions imposed under this Part of this Act.
  - (3A) This section applies to a procession which is within section 62(11B)(b) of this Act (processions specified by order) only if and to the extent that it has been prohibited or conditions imposed on it under this Part of this Act.”.
- (3) After that section there is inserted—

**“65A Guidance to local authorities**

The local authority shall, in carrying out functions under this Part of this Act, have regard to any guidance in that respect issued by the Scottish Ministers.”.

## CHAPTER 3

### OTHER PROVISIONS

#### *Offensive weapons*

#### **73 Increase in maximum term of imprisonment for certain offences**

- (1) The Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39) is amended as follows.
- (2) In section 49(1)(a) (penalty on summary conviction for offence of possessing an article with a blade or point in a public place) for “six” there is substituted “twelve”.
- (3) In section 49(1)(b) (penalty on indictment for offence of possessing an article with a blade or point in a public place), for “two” there is substituted “four”.
- (4) In section 49A(5)(a)(i) (penalty on summary conviction for offence of possessing an article with a blade or point on school premises) for “six” there is substituted “twelve”.
- (5) In section 49A(5)(a)(ii) (penalty on indictment for offence of possessing an article with a blade or point on school premises), for “two” there is substituted “four”.

#### **74 Amendment of requirements for exercise of certain powers of arrest**

- (1) The Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39) is amended as follows.
- (2) In section 47(3) (power of constable to arrest without warrant person suspected of possessing an offensive weapon in a public place)—
  - (a) after “believe” where first occurring there is inserted “to have committed or”;
  - and

- (b) the words from “if” to the end are repealed.
- (3) In section 48(3) (power of constable to arrest without warrant person suspected of obstructing search for offensive weapon), after “committed” there is inserted “or is committing”.
- (4) In section 50(3) (power of constable to arrest without warrant person suspected of contravening section 49(1) or 49A(1) or (2)), the following provisions are repealed—
  - (a) paragraph (a) and the words “and the constable” immediately preceding it; and
  - (b) paragraph (b).

## 75 Sale of knives and articles with blade or point to young persons

- (1) Section 141A of the Criminal Justice Act 1988 (c. 33) (sale of knives etc. to persons under 16) is amended as follows.
- (2) In subsection (1)—
  - (a) at the beginning there is inserted “Subject to subsection (3A) below”; and
  - (b) for “sixteen” there is substituted “eighteen”.
- (3) In subsection (2)—
  - (a) the word “and” immediately following paragraph (b) is repealed; and
  - (b) after that paragraph there is inserted—
    - “(ba) any sword; and”.
- (4) After subsection (3) there is inserted—
  - “(3A) It is not an offence under subsection (1) to sell a knife or knife blade to a person if—
    - (a) the person is aged 16 or over; and
    - (b) the knife or blade is designed for domestic use.”.
- (5) The side note to that section becomes “Sale of knives and certain articles with blade or point to persons under eighteen”.

## *Fireworks*

## 76 Possession of prohibited fireworks: powers of search and arrest

After section 11 of the Fireworks Act 2003 (c. 22) there is inserted—

### **“11A Prohibitions on possession of fireworks – power of search: Scotland**

- (1) A constable may search a person without warrant if the constable has reasonable grounds for suspecting that the person possesses a firework in contravention of a prohibition imposed by fireworks regulations.
- (2) A constable may detain a person for such time as is reasonably required to permit a search of the person under subsection (1) to be carried out.
- (3) A constable who detains a person under subsection (2) must inform the person of the reason for the detention.

- (4) If in the course of a search under this section, a constable discovers a firework which the constable has reasonable grounds for suspecting is being possessed by the person in contravention of a prohibition imposed by fireworks regulations, the constable may seize it.
- (5) A person who—
- (a) intentionally obstructs a constable in the exercise of the constable's power under subsection (1) or (2); or
  - (b) conceals from a constable acting in the exercise of the constable's power under subsection (1) any firework whose possession contravenes a prohibition imposed by fireworks regulations,
- commits an offence.
- (6) A constable may arrest a person without warrant if the constable has reasonable cause to believe the person has committed or is committing an offence under subsection (5).
- (7) A person who commits an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### **11B Prohibitions on possession of fireworks – arrest without warrant: Scotland**

- (1) A constable may arrest a person without warrant if—
- (a) the constable has reasonable cause to believe that the person has committed or is committing an offence under section 11(1) in respect of a contravention of a prohibition on possession of a firework; and
  - (b) either of the two conditions mentioned in subsection (2) is met.
- (2) The conditions are that—
- (a) having asked the person to give the person's name or address (or both), the constable—
    - (i) is not given the information asked for; or
    - (ii) is not satisfied that such information as is given is correct;
  - (b) the constable has reasonable cause to believe it is necessary to arrest the person in order to prevent the person committing any other offence in the course of whose commission there might be used a firework whose possession is prohibited by fireworks regulations.”.

### *Control of sex offenders*

#### **77 Powers to take data and samples from persons subject to notification requirements**

- (1) The 1995 Act is amended in accordance with subsections (2) to (5).
- (2) After section 19A there is inserted—

#### **“19AA Samples etc. from sex offenders**

- (1) This section applies where a person is subject to—

---

*Status: This is the original version (as it was originally enacted).*

---

- (a) the notification requirements of Part 2 of the 2003 Act;
  - (b) an order under section 2 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9) (a risk of sexual harm order); or
  - (c) an order under section 123 of the 2003 Act (which makes provision for England and Wales and Northern Ireland corresponding to section 2 of that Act of 2005).
- (2) This section applies regardless of whether the person became subject to those requirements or that order before or after the commencement of this section.
- (3) Subject to subsections (4) to (8) below, where this section applies a constable may—
  - (a) take from the person or require the person to provide him with such relevant physical data as the constable considers reasonably appropriate;
  - (b) with the authority of an officer of a rank no lower than inspector, take from the person any sample mentioned in any of paragraphs (a) to (c) of subsection (6) of section 18 of this Act by the means specified in that paragraph in relation to that sample;
  - (c) take, or direct a police custody and security officer to take, from the person any sample mentioned in subsection (6A) of that section by the means specified in that subsection.
- (4) Where this section applies by virtue of subsection (1)(c) above, the power conferred by subsection (3) shall not be exercised unless the constable reasonably believes that the person's sole or main residence is in Scotland.
- (5) The power conferred by subsection (3) above shall not be exercised where the person has previously had taken from him or been required to provide relevant physical data or any sample under section 19(2) or 19A(2) of this Act unless the data so taken or required have been or, as the case may be, the sample so taken has been, lost or destroyed.
- (6) The power conferred by subsection (3) above shall not be exercised where the person has previously had taken from him or been required to provide relevant physical data or any sample under that subsection unless the data so taken or required or, as the case may be, the sample so taken—
  - (a) have or has been lost or destroyed; or
  - (b) were or was not suitable for the particular means of analysis or, though suitable, were or was insufficient (either in quantity or quality) to enable information to be obtained by that means of analysis.
- (7) The power conferred by subsection (3) above may be exercised only—
  - (a) in a police station; or
  - (b) where the person is in legal custody by virtue of section 295 of this Act, in the place where the person is for the time being.
- (8) The power conferred by subsection (3) above may be exercised in a police station only—
  - (a) where the person is present in the police station in pursuance of a requirement made by a constable to attend for the purpose of the exercise of the power; or

- (b) while the person is in custody in the police station following his arrest or detention under section 14(1) of this Act in connection with any offence.
- (9) A requirement under subsection (8)(a) above—
  - (a) shall give the person at least seven days' notice of the date on which he is required to attend;
  - (b) may direct him to attend at a specified time of day or between specified times of day; and
  - (c) where this section applies by virtue of subsection (1)(b) or (c) above, shall warn the person that failure, without reasonable excuse, to comply with the requirement or, as the case may be, to allow the taking of or to provide any relevant physical data, or to provide any sample, under the power, constitutes an offence.
- (10) A requirement under subsection (8)(a) above in a case where the person has previously had taken from him or been required to provide relevant physical data or any sample under subsection (3) above shall contain intimation that the relevant physical data were or the sample was unsuitable or, as the case may be, insufficient, as mentioned in subsection (6)(b) above.
- (11) Before exercising the power conferred by subsection (3) above in a case to which subsection (8)(b) above applies, a constable shall inform the person of that fact.
- (12) Any constable may arrest without warrant a person who fails to comply with a requirement under subsection (8)(a) above.
- (13) This section does not prejudice the generality of section 18 of this Act.
- (14) In this section, “the 2003 Act” means the Sexual Offences Act 2003 (c. 42).”.

**19AB Section 19AA: supplementary provision in risk of sexual harm order cases**

- (1) This section applies where section 19AA of this Act applies by virtue of subsection (1)(b) or (c) of that section.
- (2) A person who fails without reasonable excuse—
  - (a) to comply with a requirement made of him under section 19AA(8)(a) of this Act; or
  - (b) to allow relevant physical data to be taken from him, to provide relevant physical data, or to allow a sample to be taken from him, under section 19AA(3) of this Act,shall be guilty of an offence.
- (3) A person guilty of an offence under subsection (2) above shall be liable on summary conviction to the following penalties—
  - (a) a fine not exceeding level 4 on the standard scale;
  - (b) imprisonment for a period—
    - (i) where the conviction is in the district court, not exceeding 60 days; or

---

*Status: This is the original version (as it was originally enacted).*

---

- (ii) where the conviction is in the sheriff court, not exceeding 3 months; or
  - (c) both such fine and such imprisonment.
- (4) Subject to subsection (6) below, all record of any relevant physical data taken from or provided by a person under section 19AA(3) of this Act, all samples taken from a person under that subsection and all information derived from such samples shall be destroyed as soon as possible following the person ceasing to be a person subject to any risk of sexual harm orders.
- (5) For the purpose of subsection (4) above, a person does not cease to be subject to a risk of sexual harm order where the person would be subject to such an order but for an order under section 6(2) of the 2005 Act or any corresponding power of a court in England and Wales or in Northern Ireland.
- (6) Subsection (4) above does not apply if before the duty to destroy imposed by that subsection would apply, the person—
- (a) is convicted of an offence; or
  - (b) becomes subject to the notification requirements of Part 2 of the 2003 Act.
- (7) In this section—
- “risk of sexual harm order” means an order under—
    - (a) section 2 of the 2005 Act; or
    - (b) section 123 of the 2003 Act;
  - “the 2005 Act” means the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9);
  - “the 2003 Act” has the meaning given by section 19AA(14) of this Act; and
  - “convicted” shall be construed in accordance with section 19A(6) of this Act.”.
- (3) In section 19 (further powers to take samples etc.), in subsection (1)(b)(i), for “or 19A” there is substituted “, 19A or 19AA”.
- (4) In section 19A (power to take samples etc. from sexual and violent offenders), in subsection (3), for “or under this section” there is substituted “, under this section or under section 19AA(3) of this Act”.
- (5) Section 19B (power of constable in obtaining samples etc.) is amended as follows—
- (a) in subsection (1)—
    - (i) in paragraph (a), after “Act” there is inserted “, or under subsection (3) (a) of section 19AA of this Act where that section applies by virtue of subsection (1)(a) of that section”; and
    - (ii) in paragraph (b), after “Act” there is inserted “, or under subsection (3) (b) of section 19AA of this Act where that section applies by virtue of subsection (1)(a) of that section”; and
  - (b) in subsection (2), after “Act” there is inserted “, or under subsection (3)(c) of section 19AA of this Act where that section applies by virtue of subsection (1) (a) of that section”.
- (6) The Sexual Offences Act 2003 (“the 2003 Act”) is amended in accordance with subsections (7) to (9).

(7) For sections 87(4) and (5) (power to take fingerprints etc. to verify person’s identity), there is substituted—

“(5A) Where a notification is given in Scotland under section 83(1), 84(1) or 85(1), the relevant offender must, if requested to do so by the police officer or person referred to in subsection (1)(b), do one or more of the following—

- (a) allow the officer or person to photograph any part of the offender,
- (b) allow the officer or person to take from the offender, or provide to the officer or person, such relevant physical data as the officer or person considers appropriate,
- (c) allow the officer or person to take from the offender any sample mentioned in any of paragraphs (a) to (c) of subsection (6) of section 18 of the Criminal Procedure (Scotland) Act 1995 by the means specified in that paragraph in relation to that sample,
- (d) allow the officer or person to take from the offender any sample mentioned in subsection (6A) of that section by the means specified in that subsection.”.

(8) In section 88 (interpretation of section 87), after subsection (2) there is inserted—

“(2A) “Relevant physical data” has the meaning given by section 18(7A) of the Criminal Procedure (Scotland) Act 1995.”.

(9) In section 91(1)(a) (offence of failing to complying with certain provisions of Part 2, including section 87(4)) for “87(4)” there is substituted “87(5A)”.

## **78 Sex offender notification requirements**

(1) Section 83 of the 2003 Act (which requires certain offenders to make an initial notification of certain information) is amended in accordance with subsections (2) and (3).

(2) In subsection (5), after paragraph (g) there is inserted—

- “(h) whether he has any passports and, in relation to each passport he has, the details set out in subsection (5A);
- (i) such other information, about him or his personal affairs, as the Scottish Ministers may prescribe in regulations.

(5A) The details are—

- (a) the issuing authority;
- (b) the number;
- (c) the dates of issue and expiry;
- (d) the name and date of birth given as being those of the passport holder.”.

(3) After subsection (7), there is inserted—

“(8) In this section, “passport” means—

- (a) a United Kingdom passport within the meaning of the Immigration Act 1971 (c. 77);
- (b) a passport issued by or on behalf of the authorities of a country outside the United Kingdom, or by or on behalf of an international organisation;

---

*Status: This is the original version (as it was originally enacted).*

---

- (c) a document that can be used (in some or all circumstances) instead of a passport.”.
- (4) Section 84 of the 2003 Act (which requires certain changes to notified information to be notified within 3 days) is amended in accordance with subsections (5) and (6).
- (5) In subsection (1)—
  - (a) the word “or” immediately after paragraph (c) is repealed;
  - (b) after paragraph (d) there is inserted—
    - “(e) his losing or ceasing to have a passport notified to the police under section 83(1) or this subsection,
    - (f) his receiving a passport which has not been notified to the police under section 83(1) or this subsection, or
    - (g) the occurrence, in relation to information required to be notified by virtue of regulations made under section 83(5) (i), of an event prescribed by the Scottish Ministers in regulations,”; and
  - (c) for “(as the case may be) the fact that he has been released” there is substituted “the fact that he has been released, the fact that he has lost or ceased to have the passport, the details set out in section 83(5A) in relation to the passport or (as the case may be) such information as the Scottish Ministers prescribe in regulations”.
- (6) After subsection (1), there is inserted—
 

“(1A) In subsection (1), “passport” has the same meaning as in section 83.”.
- (7) In section 87 of the 2003 Act (method of notification and related matters), after subsection (5A) (as inserted by section 77) there is inserted—
 

“(5B) Where a notification is given in Scotland under section 83(1), 84(1) or 85(1), the relevant offender must, if requested to do so by the police officer or person referred to in subsection (1)(b), produce each passport he has to that officer or person, for inspection by that officer or person.

“(5C) In subsection (5B), “passport” has the same meaning as in section 83.”.
- (8) In section 91(1)(a) of the 2003 Act (offences of failing to comply with certain provisions), after “(5A)” (as inserted by section 77) there is inserted “or (5B)”.
- (9) In section 138 of the 2003 Act (orders and regulations), in subsection (2), after “21,” there is inserted “83, 84,”.

## **79 Information about release: power to require giving of specified information**

- (1) Section 96 of the 2003 Act (information about release or transfer) is amended in accordance with subsections (2) and (3).
- (2) After subsection (2) there is inserted—
 

“(2A) The regulations may make provision requiring the person who is responsible for an offender, in giving notice under the regulations, to provide—

  - (a) any information about the offender, or
  - (b) a photograph of any part of the offender.

(2B) In subsection (2A), “photograph” is to be construed in accordance with section 88(2).”.

(3) After subsection (3) there is inserted—

“(4) The regulations may make different provision for different purposes.”

## **80 Police powers of entry to and examination of relevant offender’s home address**

After section 96 of the 2003 Act there is inserted—

### **“96A Entry and examination of home address**

Police powers of entry to and examination of relevant offender’s home address

- (1) A sheriff may, if satisfied on the application of a senior police officer of the relevant force as to the matters mentioned in subsection (2), grant a warrant authorising any constable of the relevant force to enter premises in the sheriffdom (if necessary using reasonable force) and to examine and search them, and the things in them, for the purpose mentioned in subsection (3).
- (2) Those matters are—
  - (a) that the premises are either—
    - (i) premises whose address has been notified by a relevant offender as his home address in his most recent notification of a home address under this Part; or
    - (ii) premises whose address has been notified by a relevant offender as the address of any other premises at which he regularly resides or stays, in his most recent notification under section 83(1) or 85(1) or in any notification under section 84(1) given by him since that notification;
  - (b) that the offender is not one to whom subsection (4) applies;
  - (c) that it would assist the carrying out of the purpose mentioned in subsection (3), for a constable of the relevant force to examine and search the premises and the things in them; and
  - (d) that on more than one occasion, a constable of the relevant force has attempted to examine and search the premises and the things in them for the purpose mentioned in subsection (3) and has been unable (whether by not being able to search and examine the premises and the things in them, or by not being able to obtain entry to the premises) to do so.
- (3) That purpose is assessing the risk of the offender committing a sexual offence.
- (4) This subsection applies to the relevant offender if he is—
  - (a) remanded in or committed to custody by an order of a court;
  - (b) serving a sentence of imprisonment or a term of service detention;
  - (c) detained in a hospital; or
  - (d) outside the United Kingdom.
- (5) A sheriff is to determine an application for a warrant under subsection (1) without hearing from the relevant offender or any other person who has an interest in the premises.

---

*Status: This is the original version (as it was originally enacted).*

---

- (6) A warrant under subsection (1) does not confer power to seize anything in the premises to which it relates.
- (7) A warrant under subsection (1) must be executed at a reasonable hour.
- (8) A warrant under subsection (1) continues in force until the expiry of the period of one month beginning with the date of the warrant's grant.
- (9) A warrant under subsection (1) authorises entry on one occasion only.
- (10) This section does not prejudice any other power of entry, examination, search or seizure.
- (11) In this section—
  - “the relevant force” means the police force maintained for the area in which the premises are situated;
  - “senior police officer” means a constable of the rank of superintendent or above; and
  - “sexual offence” means—
    - (a) an offence within any of paragraphs 36 to 59C of Schedule 3; or
    - (b) any other offence in circumstances in which it would be likely that a determination such as is mentioned in paragraph 60 of that Schedule would be made in relation to the offence.”.