

*These notes refer to the Justice Act (Northern Ireland)
2011 (c.24) which received Royal Assent on 4 May 2011*

Justice Act (Northern Ireland) 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4: Sport

This Part creates new offences to promote good behaviour by fans of association football, Gaelic games and rugby. The offences are unauthorised pitch incursion; offensive chanting; missile throwing; the possession of flares or fireworks; and the possession of alcohol on hired buses en route to regulated matches. It also introduces football banning orders for the purpose of helping to prevent violence and disorder at association football matches. A court will be able to make a banning order prohibiting a person from attending certain football matches for a set period. It will be a criminal offence to fail to comply with a football banning order.

Chapter 1 and Schedule 3 set out the definitions for regulated matches and the period of a regulated match. Chapter 2 deals with the new offences at regulated matches. Chapter 3 deals with alcohol on vehicles travelling to a regulated match. Chapter 4 deals with banning orders.

Chapter 1 - Regulated matches

This Chapter consists only of section 35, which sets out which sports matches are covered by each Chapter in this Part of the Act and also the period during which the offences in Chapter 2 are to apply.

Section 35: Regulated matches

This section outlines what matches are affected by each of the Chapters in this Part by reference to Schedule 3. The notes on Schedule 3, at the end of this document, outline the matches concerned.

In Chapter 2 (offences at regulated matches) a regulated match is those outlined in paragraph 2, 3, 6 or 8 of Schedule 3. For Chapter 3 (alcohol on transport) designated matches are those specified in paragraph 2, 3, 4, 6, 7, 8 or 9 of Schedule 3. For Chapter 4 (banning orders) regulated matches are matches named in paragraph 2, 3, 4, or 5 of Schedule 3.

This section also explains, for the purposes of all offences in Chapter 2, the period of a regulated match, including occasions where a match is postponed or

cancelled. The period of a regulated match begins one hour before the start of the match or (if earlier) one hour before the time at which it is advertised to start. The period ends 30 minutes after the end of the match. Postponements or match delays are catered for by retaining the same period before the advertised match starting time as would have applied had the match taken place as advertised.

The Department may amend Schedule 3 by order subject to negative resolution.

Chapter 2 - Conduct at Regulated Matches

This Chapter outlines all of the offences being introduced which relate to conduct at matches.

Section 36: Throwing of articles capable of causing injury

This section creates an offence of throwing any article capable of causing injury if it strikes a person at or towards a playing area or other specified areas without lawful authority. A person guilty of this offence is liable to a fine not exceeding level 3 on the standard scale. Currently a level 3 fine has a maximum value of £1,000.

Section 37: Chanting

This section creates an offence of sectarian or indecent chanting during regulated matches. Chanting is defined as the repeated uttering of any words or sounds whether alone or in concert with one or more others. Chanting that consists of or includes matter which is threatening, abusive or insulting to a person by reason of that person's colour, race, nationality (including citizenship), ethnic or national origins, religious belief, sexual orientation or disability is also covered by this offence. A person guilty of this offence is liable to a fine not exceeding level 3 on the standard scale currently with a maximum of £1,000.

Section 38: Going onto the playing area

This section makes it an offence for a person to go onto the playing area, or any area adjacent to the playing area to which spectators are not generally admitted, without lawful authority or excuse. A person guilty of this offence is liable to a fine not exceeding level 3 on the standard scale (current maximum £1,000).

Section 39: Possession of fireworks, flares, etc.

This section creates an offence of having a specified article when at a regulated match or trying to enter a ground during the regulated period. A specified article is a firework or an article or substance whose main purpose is the emission of a flare for purposes of illuminating or signalling (as opposed to igniting or heating) or the emission of smoke or a visible gas. In particular this applies to distress flares, fog signals and pellets and capsules intended to be used as fumigators or for pipe testing but not to matches, cigarette lighters or heaters. A person guilty of this offence is liable to a fine not exceeding level 3 on the standard

scale (current maximum £1,000) or to imprisonment for a term not exceeding 3 months.

Chapter 3 - Alcohol on vehicles travelling to regulated match

This Chapter relates to possession of alcohol on vehicles which are travelling to a regulated match.

Section 40: Offences in connection with alcohol on vehicles

This section creates two offences around alcohol on certain transport to regulated matches. First, it defines which vehicles are covered by the offences created. These are motor vehicles which can carry 9 or more passengers and are being used principally for the purpose of carrying passengers for reward for the whole or part of a journey to a regulated match.

The first offence is that of causing or permitting intoxicating liquor to be carried on such a vehicle and applies to an operator, servant or agent of the operator; or the person who hired the vehicle, their servant or agent. The operator of a vehicle is the driver if the driver owns the vehicle. In any other case it is the person for whom the driver works. A person guilty of this offence is liable to a fine not exceeding level 4 on the standard scale. Currently a level 4 fine has a maximum value of £2,500.

It is also an offence to possess intoxicating liquor while on a relevant vehicle. A person guilty of this offence is liable to a fine not exceeding level 3 on the standard scale (current maximum £1,000) or to imprisonment for a term not exceeding 3 months.

A constable may stop and search a vehicle if he/she suspects that one of these offences has taken or is taking place. Definitions of 'intoxicating liquor' and 'motor vehicle' are provided.

The section gives the Department an order-making power to amend which vehicles this offence applies to. Such orders would be subject to affirmative resolution of the Assembly.

Chapter 4 - Banning orders in relation to regulated matches

This Chapter creates banning orders and provides for their content, period, additional requirements, termination, enforcement and related appeals.

Section 41: Banning orders: making on conviction

This section states the sorts of which offences which will trigger the sentencing court's consideration of a banning order. These are where the person who committed the offence engaged in violence or disorder at, entering or leaving a regulated match; on the journey to or from a regulated match; or where it appears to the court the offence was motivated by a regulated match. The court must impose a banning order if a person has been convicted of such an offence and

the court believes making a banning order would help to prevent violence or disorder at or in conjunction with any regulated matches.

The section states what evidence may be considered and that a banning order may only be made in addition to a sentence or conditional discharge. A banning order is to be taken to be a sentence for the purposes of appeal rights.

Section 42: Banning orders: content

This section provides a definition of banning order as an order prohibiting the person from entering any premises for the purpose of attending a regulated match. The court is required to explain the effect of the banning order to the subject in ordinary language.

This section requires the person to report initially to a police station. It also sets out a list of events which require the person to notify the police (e.g. a change of address), and the time period in which notification may take place. It also provides for the suspension of reporting requirements when the person is in legal custody or when the person is living outside Northern Ireland.

Section 43: Banning orders: supplementary

This section gives the requirements for the adjournment of proceedings, covering warrants, remand and bail. It gives a right of appeal to the prosecution where the court has not made a banning order.

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

This section gives the definitions of violence and disorder for the purposes of this Chapter.

Violence is defined as violence against persons or property and includes threatening violence and doing anything which endangers the life of any person.

Disorder includes stirring up sectarian hatred or hatred against groups of persons defined by reference to colour, race, nationality (including citizenship), ethnic or national origins, religious belief, sexual orientation or disability or against an individual as a member of such a group; using threatening, abusive or insulting words or behaviour or disorderly behaviour; and displaying any writing or other things which are threatening, abusive or insulting.

Section 45: Banning order: duration

This section explains how the minimum and maximum period of a banning order is determined. The period starts when the banning order is made. Where an order is made in addition to a sentence of immediate detention the maximum is 10 years and the minimum is 6 years. In any other case the maximum is 5 years and the minimum is 3 years.

Section 46: Banning orders: additional requirements

This section provides that in making a banning order court may, if it thinks fit, include additional requirements of the person. It also provides that the court which made the order may vary it on the request of the person or of the prosecutor.

Section 47: Termination of banning orders

This section allows that when two thirds of the period of the order has elapsed the person subject to an order may apply to have the order terminated. On application the court may terminate the order or refuse the application. The section sets out factors which must be considered by the court such as the person's character, conduct of the person since the order was made and the nature of the offence which led to it. A second termination application may not be made within 6 months of the refusal of the first. The applicant may be required to pay the costs of the application.

Section 48: Information about banning orders

This section determines to whom the court must send a copy of each banning order and each terminating order. These are, as relevant, the person; the Chief Constable; the police station that the person must report to initially; if the person is being detained in custody, the person in whose custody they are detained; and any other person prescribed by the Department. Notice of the subject's release from custody, in certain circumstances, must also be provided to the Chief Constable.

Section 49: Failure to comply with banning order

This section creates the offence of failing to comply with any requirement imposed by a banning order and a person guilty of that offence is liable to imprisonment for a term not exceeding 6 months; a fine not exceeding level 5 on the standard scale (current maximum £5,000); or both.

Chapter 5 - Enforcement

This Chapter consists only of section 50.

Section 50: Powers of enforcement

This section sets out what constables may do in enforcing the provisions of this Part of the Act. Where they suspect an offence has been committed under this Part constables may enter a sports ground and / or search a person.