

JUSTICE ACT (NI) 2011 – SPORTS PROVISIONS – GUIDANCE FOR SPORTS AUTHORITIES

Purpose of this Guidance Note

The purpose of this guidance note is to assist sports authorities to prepare for the commencement and operation of the sports law provisions of the Justice Act (Northern Ireland) 2011 and specifically sections 35 to 40, section 50 and schedule 3 of the Act.

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

Commencement of the Legislation: Current Position

The Justice Act became law with the granting of Royal Assent on 4 May 2011. However, none of the sports provisions of the Act will come into operation until the Department makes an Order specifying the commencement date. It has now been decided that a commencement order will be made to bring most of the sports provisions into operation with effect from 1 August 2011. So sections 35 to 40, section 50 and schedule 3 of the Act will operate from that date.

The remaining sports provisions in the Act, those relating to Banning Orders (in sections 41 to 49) are not to be brought into operation until probably near the end of 2011, as these require more detailed preparation, including subordinate legislation.

This guidance note therefore concentrates on those sections of the Justice Act which are now about to be commenced, namely sections 35 to 40, section 50 and schedule 3 (ie the so-called 'in-ground' and 'on -buses' offences). Separate, detailed notes will be prepared in respect of the additional Banning Order provisions once a more precise commencement timescale for these is decided.

Sports Law Provisions: General

All of the sports law provisions of the Justice Act (NI) 2011 are found in Part 4 of the Act. Part 4 is itself broken down into Chapters. These Chapters, which are further sub-divided into Sections, deal with:- matches that are regulated (ie association football, gaelic games and rugby union); offences at regulated matches; alcohol restrictions on certain vehicles going to matches; football banning orders (to be commenced at a later date); and police enforcement powers.

It should be noted that the alcohol restrictions on certain vehicles going to matches (in section 40 of the Act) are primarily of relevance to travelling spectators and to bus companies. Nevertheless, a short description of the

restrictions and offences in section 40 is given in this guidance note for the benefit of sports bodies.

PART 4 OF THE ACT - SPORT

CHAPTER 1 – REGULATED MATCHES

Section 35 and Schedule 3 (Regulated Matches and the Period of a Regulated Match)

Section 35 covers two aspects of matches affected by the Act's sports provisions. Firstly, when read with Schedule 3, it specifies which sorts of match are affected by each of the provisions in Chapters 2 to 5 of Part 4 of the Act (ie they constitute a 'regulated match') and secondly, the match time period during which the 'in ground offences' (ie those in sections 36 to 39, and 50) apply.

Regulated Match Categories

Section 35 and Schedule 3 of the Justice Act set out the categories of matches that constitute regulated matches. These are the following categories of association football matches, gaelic games matches and rugby union matches:-

Association football matches taking place in Northern Ireland that involve member clubs of certain leagues, or international teams. Association football matches affected are mostly those involving the NI international team, and those involving a Northern Ireland club side in which one or both teams playing is a member of the IFA Premier League, IFA Championship or the FAI Premier League or FAI First Division. Even where only one such team is playing in a match, the match is covered by the Act's provisions.

All gaelic games and rugby union matches taking place at sports grounds in Northern Ireland designated as requiring a safety certificate under the Safety of Sports Grounds (NI) Order 2006 . ("Gaelic games" are defined as gaelic football (including international rules matches) hurling and camogie.)

It should be noted that, in addition to these categories, section 40 of the Justice Act (offences around carrying alcohol on buses), includes certain association football, gaelic games and rugby union matches which involve journeys to matches outside Northern Ireland. The categories of matches which apply under Section 40 are described under Chapter 3 below.

It should also be noted that, in the case of association football, the Act's provisions affect, not only "first" or "senior" teams, but all teams (men's women's, boys', girls' etc) that fall within the categories specified in Section 35 and schedule 3. The provisions likewise apply to all gaelic games and rugby union matches (men's, women's, senior, minor, schools etc) played at

grounds designated as requiring a safety certificate under the Safety of Sports Grounds (NI) Order

The period of a regulated match

In addition to describing the categories of regulated matches, section 35 (in subsections (2) and (3)) defines the period around regulated matches during which the various “in-ground” offences apply. (“In-ground” offences are those in sections 36 to 39.) The basic formula is that these offences apply only during the period starting one hour before the scheduled start of the match and ending 30 minutes after the final whistle. Section 35(3) specifies how the period is adjusted where a match does not take place on the advertised date and is either played at a later date or the fixture is not played at all.

CHAPTER 2 – CONDUCT AT REGULATED MATCHES

Section 36 (Throwing of articles capable of causing injury)

This makes it an offence, without lawful authority or excuse, to throw certain articles at or towards certain areas during the period of a regulated match (as defined in section 35). Some specifics:-

- It does not matter whether the article hits a person or whether the thrower had any intention of hitting a person.
- The only articles covered by the offence are those which are capable of causing injury to someone struck by them. It will be for police and prosecuting authorities in the first instance, and the courts ultimately, to decide in each case whether a particular thrown article was capable of causing personal injury.
- The offence applies only where an article is thrown at or towards:
 - o the pitch or any area beside the pitch to which spectators are not generally admitted;
 - o any area where people are or may be present.
- There may be circumstances where throwing articles is perfectly in order and in which there is no intention by clubs, police, etc that the offence should apply. Some of these circumstances will be predictable, and can therefore be excluded from the offence by “lawful authority”. For example, training staff or team substitutes throwing water bottles to players on the pitch during a break in play. Club instructions could make it clear that the throwing of such items in those circumstances, is authorised and therefore excluded from the scope of the offence. It will be for the thrower to prove in court that he had lawful authority to throw the article as he did.
- Alternatively, the thrower, if prosecuted, would have to prove that he had a lawful excuse for throwing the article. This might be, for example, where someone disarms a fellow supporter of a knife, which he then throws harmlessly away, for safety reasons.
- A case would only proceed to court where the prosecuting authorities believed that the thrower did not have lawful authority or excuse.

Section 37 (Chanting)

This makes it an offence to chant certain things during a regulated match. Chanting means the repeated uttering of words or sounds; it can be done by an individual or by more than one person together. Only certain sorts of chanted material are caught by the offence:-

- Matter that is of a sectarian or indecent nature;
- Matter that is threatening, abusive or insulting to a person by reason of his colour, race, religious belief, etc (as listed).

Neither “sectarian” nor “indecent” is defined in law. It will be for the prosecuting authorities and ultimately for the courts to decide whether the matter that was chanted in a particular case is either sectarian or indecent or is otherwise caught by the offence. Clubs will wish to raise any concerns about specific instances of chanting with the local police in the first instance.

This offence applies only during the period of a regulated match (as defined in section 35).

Section 38 (Going onto the playing area)

This makes it an offence to enter certain areas of the ground, without lawful authority or excuse, during a regulated match. The areas are the pitch and any area beside the pitch to which spectators are not generally admitted. As with the “article-throwing” offence in section 36, this offence is subject to lawful authority or excuse. So clubs may wish to make it clear to all, who has their authority to go into these areas and in what circumstances. In effect, this means that it is for clubs / match organisers to say in advance in what circumstances pitch incursions are in order and when not. Alternatively, other unpredictable circumstances may arise where, in the opinion of the person who enters such an area, entry is justified. If a prosecution is taken against someone, it will be for him to prove to the court that he had lawful authority or excuse.

This offence applies only during the period of a regulated match (as defined in section 35).

Section 39 (Possession of fireworks, flares, etc)

This makes it an offence for someone to have certain articles in his possession during a regulated match, in certain areas in and at the ground. The prohibited articles are fireworks (not defined) and flares (as defined). A person will not be convicted if he proves that he had possession of a firework with lawful authority – for example that he had a Department of Justice licence under the explosives (Fireworks) Regulations (Northern Ireland) 2002. This could allow match organisers / grounds owners to legally hold fireworks displays at half time for example, but it is difficult to envisage a scenario in which a spectator would obtain a licence to have or use fireworks in a ground at a match.

In relation to flares, it is not necessary to have a licence to be in possession of these. However, we do not expect there to be any reason why a spectator at a match should normally need these in his possession. Legal authority would be given in such circumstances where a person was, for example, carrying out maintenance work in grounds, during the period of a regulated match, and required some type of flare for his work.

The affected areas are any area of the ground from which the match may be directly viewed and any area where the person is entering or trying to enter the ground.

This offence applies only during the period of a regulated match (as defined in section 35).

CHAPTER 3 – ALCOHOL ON VEHICLES TRAVELLING TO REGULATED MATCHES

Section 40 (Offences in connection with alcohol on vehicles)

This creates two offences around the possession of alcohol (“intoxicating liquor”) on certain vehicles en route to regulated matches. The vehicles affected are “motor vehicles” with a capacity of 9 or more passengers, being used primarily to carry passengers for reward for all or part of a journey to a regulated match. Train journeys are not covered by the offences.

There needs to be some element of “reward” to the driver or operator of the vehicle in carrying the passenger(s) to the match. The offences do not catch journeys where the main intended purpose of carriage is not to bring the passenger(s) to a regulated match. Nor do the offences catch journeys from matches.

The first offence, in relation to such vehicles on such journeys, is knowingly to allow alcohol to be carried. This offence applies against the vehicle’s operator (as defined), or his “servant or agent”, and against the person to whom the vehicle is hired, etc.

Secondly, it is an offence for someone to be in possession of alcohol on such vehicles on such journeys.

There is existing law which covers the consumption of alcohol on buses. The new law relates to possessing alcohol.

These section 40 offences apply to journeys to the regulated matches listed in paragraphs 2 to 4 and 6 to 9 of schedule 3 of the Act. They cover matches both inside and outside Northern Ireland. It should be noted that the offences apply only when the vehicle concerned is in Northern Ireland. For example, where a regulated match is taking place in Dublin, the offences would apply only to that part of the journey which takes place inside Northern Ireland.

CHAPTER 5 – ENFORCEMENT

Section 50 (Powers of enforcement) (and police powers under section 40(6) in Chapter 3)

Section 50 gives the police explicit powers to enter grounds to enforce the Act's sports provisions during the period of a regulated match. It also enables the police to search someone they reasonably suspect of committing an offence under these provisions.

Section 40(6) allows the police to stop and search a relevant vehicle where they reasonably suspect an offence is being or has been committed under section 40.

These powers complement others available both under existing criminal and public order legislation and existing health and safety legislation affecting sports grounds.

Liability to prosecution

None of the new offences or powers created under the Justice Act alters or rescinds the powers, offences and penalties that already apply under existing health and safety legislation affecting sports grounds in Northern Ireland.

However, under the new Justice Act, individual spectators attending regulated matches and, in specified circumstances, those who help transport them to such matches, may be prosecuted if they are suspected of having committed offences under that Act.

Further information

A copy of the Justice Act (Northern Ireland) 2011 may be purchased from The Stationery Office Limited (TSO) at 16 Arthur Street, Belfast, BT1 4GD, Tel: 028 9023 8451 or through TSO's website at www.tso.co.uk. The legislation can also be found at www.legislation.gov.uk .

Further Guidance and Advice

On-going, non-binding and independent advice on the practical implications and outworking of the sports provisions of the Justice Act is available from Sport Northern Ireland at:

Sport Northern Ireland
House of Sport
Upper Malone Road
BELFAST
BT9 5LA
Tel: 028 9038 3842
E-mail: safetyofsportsgrounds@sportni.net

Some Questions and Answers

Q: What do sports ground operators and match organisers need to do now about these offences?

A: In relation to the “article-throwing” offence in section 36 and the pitch incursion offence in section 38, sports ground operators and match organisers should consider, if they have not already done so, in what circumstances (if any) they wish to authorise throwing and incursion. They should then make players, staff, visitors and fans aware of their policies and ground rules.

Q: Will sports ground operators /match organisers need to provide additional training to cope with these new offences?

A: The Justice Act imposes no direct obligation on ground owners to provide additional training to cope with these new offences. However, it would be prudent for sports ground operators and match organisers to make sure that those who attend their games and everyone connected with the management of events at their grounds is aware of the new offences.

Q: What should match organisers do if they see an offence being committed?

A: Match organisers should consider reporting the offence to the police, who will consider possible prosecution action (by the Public Prosecution Service). The police / PPS will need sufficient evidence and the PPS will only proceed if it decides that prosecution is also in the public interest. Obviously, it is also good practice for match organisers to liaise with the police as appropriate in advance of games, especially where there are concerns about the potential for disorder or commission of offences.

Q: What sort of evidence will the police / PPS be looking for in order to decide whether to prosecute someone for an offence committed?

A: They will need evidence that allows the identity of the suspect(s) and the location of the offence to be confirmed. This could be CCTV / mobile phone evidence, for example, and / or personal identification by a witness who is able to confirm that the offence took place during the period of a regulated match?] For the article-throwing offence and the fireworks / flares offence, it would be helpful to present the item thrown or the firework or flare concerned. For the chanting offence, witness statements from spectators, stewards or police, for example, are likely to be the main form of evidence. CCTV, mobile phone and other audio evidence, if available, could also help.

Q: What can stewards do immediately within the law about fans who appear to be committing offences?

A: Stewards are already entitled to use reasonable force, if necessary, to eject a person from the ground. However, they may not arrest or detain the person; nor can they force the person to disclose his identity or forcibly confiscate anything from him. Match organisers / stewards are already entitled to require visitors, including fans, to submit to a search as a condition of entry to the ground. Whether they exercise this right is a matter for ground management and match organisers to determine.

Q: Are ground management , match organisers, and stewards under a legal obligation to report apparent breaches of these laws to the police?

A: Strictly, it will be a matter for the discretion of match organisers and stewards to decide whether a particular apparent breach ought to be reported to the police. All flagrant breaches ought to be reported, even if the supporting evidence may not necessarily be sufficient for a prosecution. Open liaison with police about misconduct and disorder by spectators will help both match organisers and police to address these issues appropriately.

Ultimately, though, ground management, not the police, are primarily responsible, under health and safety law, for safety and crowd control inside their sports venues.

Q: Where can further advice and guidance be obtained on planning and managing sports events and matches in the context of the new Justice Act?

A: Such advice and guidance are available from Sport Northern Ireland at:-

Sport Northern Ireland
House of Sport
Upper Malone Road
BELFAST
BT9 5LA
Tel: 028 9038 3842
E-mail: safetyofsportsgrounds@sportni.net

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DEPARTMENT OF JUSTICE
028 9052 7522
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