

Consultation Response

Football Banning Orders

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Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Criminal Law Committee welcomes the opportunity to consider and respond to the Scottish Government consultation on Football Banning Orders¹. The Committee has the following comments to put forward for consideration.

General comments

We note from the consultation paper that the Scottish Government perceives gaps in the current law regulating the imposition of Football Banning Orders (FBOs) as a mechanism to address violence and disorder at football matches in Scotland.

At present, FBOs prohibit an individual from attending regulated football matches in the UK and can be imposed only where:

- an offence is committed by someone over 16 years old
- the offence committed involves violence or disorder related to a football match

While the consultation paper refers to a number of high-profile cases, we would welcome further statistical evidence that provides a clear and up-to-date understanding of the use of FBOs in Scotland² and the need for their expansion.

Our responses focuses primarily on the impact that FBOs may have on the criminal justice system. Other organisations and interested parties would be better placed to comment on the impact of FBO may have for football supporters, authorities, and clubs.

¹ Football Banning Orders consultation paper ([Scottish Government website](#))

² We found the publication of an FOI release on the number of FBOs broken down by club published on 24 November 2021 ([Scottish Government website](#))



Consultation questions

Question 10. Do you think a Football Banning Order, which prevents individuals from attending football matches if they are found guilty of an offence of violence or disorder related to a football match, is a suitable punishment for a football-related offence?

Yes, we do.

We consider that FBOs offer a proportionate and appropriate punishment by imposing specific obligations on the offender. Failure to comply with a FBO constitutes a criminal offence.

Accordingly, we are of the view that FBOs contribute to creating a safer football environment and may be imposed in conjunction with other disposals, such as a Community Payback Order or a fine.

Question 11. Do you think Football Banning Orders should be extended to include other behaviours which can be prosecuted as an offence but do not include behaviours or actions which meet the definition of violence or disorder, as set out above, such as possessing drugs or an offensive weapon?

FBOs were introduced by the Police, Public Order and Criminal Justice (Scotland) Act 2006. As noted above, the 2006 Act limits the use of FBOs to offences involving violence or disorder related to a football match, and provides statutory definitions of those terms.

We consider that extending the scope of FBOs to include the possession of offensive weapons, fireworks or pyrotechnic articles is reasonable. The possession of such items presents significant risks to those attending football matches.

However, we are not persuaded of the necessity of extending the use of FBOs to individuals convicted of offences involving the possession of controlled drugs. We would welcome further evidence to support the need for such an extension.



Question 14. When someone is found guilty of a football-related offence for which an FBO can be granted there is a presumption in England and Wales that an FBO be applied. In Scotland, no such presumption exists. Do you think there should be a presumption an FBO will be granted upon conviction of a football-related offence in Scotland?

We consider that the introduction of such a presumption could be consistent with other areas of criminal legislation in Scotland. For example, in domestic abuse cases, courts are required to consider whether to impose a non-harassment order after hearing from the parties. When the court decides not to impose an order, reasons must be given.

However, if a legislative presumption is to be introduced, we consider that further evidence is required regarding the current use of FBOs by the Scottish courts. If such evidence demonstrates that sentencers are not routinely considering FBOs in appropriate cases, or are declining to impose them without clear justification, the introduction of a presumption may be justified.



For further information, please contact:

Liliana Torres Jimenez
Policy Team
Law Society of Scotland
LilianaTorresJimenez@lawscot.org.uk