

## **LORD ADVOCATE'S GUIDELINES TO CHIEF CONSTABLES ABOUT REPORTING OF CASES INVOLVING ANTISOCIAL BEHAVIOUR**

### **Reporting of breaches of antisocial behaviour orders**

Under the Antisocial Behaviour (Scotland) Act 2004 section 9(1) makes it an offence to breach an antisocial behaviour order.

Section 9(3) provides that where a person commits an offence ("a separate offence"), which is also a breach of an antisocial behaviour order, an offence under section 9(1), and the offender is charged with that separate offence, the person is not liable to be proceeded against for the breach under section 9(1).

### **Offences**

The Lord Advocate therefore instructs that where an accused is charged with a separate offence which also constitutes a breach of an antisocial behaviour order, the separate offence should be reported as an offence aggravated by the fact that the accused was subject to an antisocial behaviour order at the time of the commission of the separate offence.

Where the only offence is a breach of an antisocial behaviour order, or such a breach is accompanied by other offending behaviour which does not constitute a breach of an order, the breach should be reported as an offence under section 9(1).

### **Documentary Productions**

Reports of a breach of an antisocial behaviour order or an offence aggravated by the fact the accused was subject to an antisocial behaviour order at the time of its commission, should be submitted with a certified copy of the relevant anti-social behaviour order(s) from the clerk of court and the necessary documentation, "a certificate of posting", to prove that a copy of the order was served on the accused(1). If that information is not available at the time of submission of the report, police officers should obtain copies of the relevant documentation and submit these as case related documents as soon as possible, making reference in the police report to progress in obtaining them.

### **Additional information to be included in the police report**

In cases involving a breach of an antisocial behaviour order or a related aggravated offence, police officers should include in the police report, brief background details about the antisocial behaviour order, such as an outline of the circumstances which formed the basis of the application, who made the application and whether the order has been varied at any stage.

Police officers should also consider including this background information in a police report where it is known that the local authority or a registered social landlord have applied, or are in the process of applying/about to apply for an antisocial behaviour order in an attempt to tackle antisocial behaviour directly related to the incident being reported.

### **Multiple Aggravations**

Police officers should bear in mind that there may be instances where one incident involves not only an antisocial behaviour order aggravation but also a bail, racial and/or religious prejudice aggravation. In such cases the Lord Advocate directs that the all aggravations should highlight all aggravated aspects of the offending behaviour.

October 2004

[1] Under section 8(2) the clerk of court is to serve a copy of the order on the person subject to it and provide a copy to the authority which made the application. Section 8(5) sets out that a copy of the order is served if it is given to the person subject to the order or sent to the person by registered post or recorded delivery. Section 8(7) states that a certificate of posting of a letter shall be sufficient evidence of the sending of the letter on the day specified in the certificate.

Under 234AB(1) of the 1995 Act, the court shall serve a copy of the order on the accused and give a copy to the appropriate local authority. It states at 234AB(4) that a copy of the order is served on the accused if given to him or sent to him/her by registered post or recorded delivery. Subsection (5) provides that that a certificate of posting of a letter under subsection (4)(b) issued by the postal operator shall be sufficient evidence of the sending of the letter on the day specified in such certificate.