

**LORD ADVOCATE'S GUIDELINES TO CHIEF CONSTABLES  
REPORTING TO PROCURATORS FISCAL OF OFFENCES ALLEGED TO  
HAVE BEEN COMMITTED BY CHILDREN**

**REVISED CATEGORIES OF OFFENCES**

**Category 1**

Offences which require by law to be prosecuted on indictment or which are so serious as normally to give rise to solemn proceedings on the instructions of the Lord Advocate in the public interest.

**Category 2**

Offences alleged to have been committed by children aged 15 years or over which in the event of conviction oblige or permit a court to order disqualification from driving.

**Category 3**

Offences alleged to have been committed by children as described in section 93(2)(b)(ii) of the Children (Scotland) Act 1995.

**Category 4**

Breaches of antisocial behaviour orders allegedly committed by children aged 12-15 years.

**Category 5**

Offences alleged to have been committed by children within one month of their 16<sup>th</sup> birthday.

**EXPLANATORY NOTES**

**Category 1**

1. Offences which require by law to be prosecuted on indictment fall under two heads - (1) common law offences which are within the exclusive jurisdiction of the High Court of Justiciary namely treason, murder and rape; and (2) statutory offences for which the statute only makes provision for prosecution on indictment or for a penalty on conviction on indictment - for example, contraventions of the Firearms Act 1968, Section 16, 17(1) and (2), and 18(1), the Road Traffic Act 1988, Section 1, and the Criminal Law (Consolidation) (Scotland) Act 1995 Section 5(1).

2. Offences of culpable homicide, attempted murder, assault to the danger of life, sodomy, assault and robbery involving the use of firearms, attempted rape, incest and related offences (contrary to the Criminal Law (Consolidation) (Scotland) Act 1995 Sections 1-3) are offences which are normally indicted in the High Court of Justiciary.

3. Other offences which may fall into this category as being those normally prosecuted on indictment are assault to severe injury or permanent disfigurement, assault with intent to rape, serious assault and robbery (in particular involving the use of weapons other than firearms), assault with intent to rob involving the use of firearms, fire-raising and malicious mischief causing or likely to cause great damage to property or danger to life, all Misuse of Drugs Act offences involving possession of Class A drugs and possession with intent to supply and supply of any controlled drugs.

4. It should be emphasised that only offences which are normally prosecuted on indictment are to be reported.

### **Category 2**

5. This category applies exclusively to children aged 15 years or over. Children will be prosecuted for this type of offence only if the Procurator Fiscal considers that it would be in the public interest to obtain a disqualification which would still be in force when the child became 16 and that in the event of conviction it was likely that the court would impose such a disqualification. Minor Road Traffic Act offences carrying a liability to discretionary disqualification should not normally be reported.

### **Category 3**

6. There is no restriction on the forum for the prosecution of children of or over 16 years of age who can be proceeded against in the District Court.

### **Category 4**

7. There is a presumption that the Reporter will deal with these cases, following discussion with the Procurator Fiscal. Therefore, cases where 12-15 year olds have been charged with a separate offence (*section 9(3) of the Antisocial Behaviour etc (Scotland) Act 2004*) should not be reported to the Procurator Fiscal unless the separate offence falls to be reported under another part of these Directions. However, children will only be prosecuted where the offending behaviour accompanying the breach is serious.

8. When reporting to Procurators Fiscal cases against adults in which it is alleged that a child also committed the offence (not being an offence specified in categories 1 to 3) along with the adult, the report should state that a copy of the report has been sent to the reporter for action in respect of the child. The police should not include the child offender as a subject in the police report to the Procurator Fiscal.

9. The Lord Advocate's Guidelines to Chief Constables about reporting of Cases Involving Antisocial Behaviour do not preclude you from reporting to Procurators Fiscal any other offences, alleged to have been committed by children, where you are of the opinion that, for special reasons (which must be stated in the report) prosecution might be considered.

### **Category 5**

10. The presumption as indicated above shall not apply to cases where the child is within one month of his or her 16<sup>th</sup> birthday where the Reporter has insufficient time or information to make a decision that can be implemented timeously. A children's hearing, arranged to consider the case of a child who is not the subject of a supervision requirement, must take place prior to the child's 16<sup>th</sup> birthday. In arranging the children's hearing, the Children's Reporter must give the child, at least, 7 clear days notice of the hearing.

**Elish Angiolini**  
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