

section I(I)(a) of the 1998 Act and the wording of sections 4A and 5 of the Public Order Act 1986. Section 4A, as inserted by section 154 of the Criminal Justice and Public Order Act 1994, provides:

“(1) A person is guilty of an offence if, with intent to cause a person harassment, alarm or distress, he—(a) uses threatening, abusive or insulting words or behaviour, or disorderly behaviour, or (b) displays any writing, sign or other visible representation which is threatening, abusive or insulting, thereby causing that or another person harassment, alarm or distress.”

Section 5 provides:

“(1) A person is guilty of an offence if he—(a) uses threatening, abusive or insulting words or behaviour, or disorderly behaviour, or (b) displays any writing, sign or other visible representation which is threatening, abusive or insulting, within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby.”

Section 1. (1) of the 1998 Act provides:

“An application for an order under this section may be made by a relevant authority if it appears to the authority that the following conditions are fulfilled with respect to any person aged ten or over, namely—(a) that the person has acted, since the commencement date, in an anti-social manner, that is to say, in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself. .

In reliance on authorities, the majority of which were considering the meaning of the term “criminal cause or matter”, counsel further submitted that an application under section 1 of the 1998 Act. is a criminal proceeding because it can result under section 1(10) in the imposition of a term of imprisonment. Counsel cited *Proprietary Articles Trade Association v Attorney General for Canada* [1993] AC 310, 324 where Lord Atkin stated:

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R (McCann) v Manchester Crown Ct (HL(E))

Lord Hutton

“It appears to their Lordships to be of little value to seek to confine crimes to a category of acts which by their very nature belong to the domain of ‘criminal jurisprudence’; for the domain of criminal jurisprudence can only be ascertained by examining what acts at any particular period are declared by the state to be crimes, and the only common nature they will be found to possess is that they are prohibited by the state and that those who commit them are punished.”

In *Exp Alice Woodbail* (1888) 10 QBD 832, 837-838, Lindley LJ stated:

“Can we say that the application in the present case is not an application in a criminal cause or matter? I think that in substance it certainly is. Its whole object is to enable the person in custody to escape being sent for trial in America upon a charge of forgery.”

In *Amand v Home Secretary* [1943] AC 147, 156 Viscount Simon LC stated:

“If the matter is one the direct outcome of which may be trial of the applicant and his possible punishment for an alleged offence by a court claiming jurisdiction to do so, the matter is criminal.”

Lord Wright stated, at p 162:

“if the cause or matter is one which, if carried to its conclusion, might result in the conviction of the person charged and in a sentence of some punishment, such as imprisonment or fine, it is a ‘criminal cause or matter’.” I am unable to accept these submissions. The application for an anti-social behaviour order does not charge the defendant with having committed a crime. The purpose of the application is to obtain an order