

criminal conduct. Under section 1(I)(a) of the Crime and Disorder Act 1998 a person with no previous convictions can be accused of conduct which could equally well have been prosecuted under section 5 of the Public Order Act 1986. An individual can thus be brought before the court for the first time under section 1 (I)(a). The penalties that can be imposed are in reality much more severe than those under section 5 or under the procedure of binding over to keep the peace, which is a criminal matter under the convention: see *Steel v United Kingdom* 28 EHRR 603. The protections under criminal law are designed to protect the liberties of persons accused of such conduct. It is important that such protections exist and are changed only by the express will of Parliament. The analogies with sex offenders etc concern people who have already been convicted. It is quite different to impose a similar regime on someone who has no convictions. There is no objection to simple procedures to deal with public order disturbances. There is a long history of such powers see summary in: *Percy v Director of Public Prosecutions* [1995] 3 WLR 1382. The proper approach to anti-social behaviour is for principled changes in the criminal law to be made by Parliament. The alternative of regarding the matter as civil but reading in criminal protections on an “ad hoc” basis is conceivable but less desirable in that it left to the Courts to define the protections traditionally provided by the criminal law.

Section 3 of the Human Rights Act 1998 imposes on the courts a broad general duty to construe primary, as well as secondary, legislation to accord with Convention rights. In that respect the strong interpretive obligation imposed by section 3 necessarily subordinates the narrow intention of Parliament in the adoption of particular measures to its broader intention to avoid any implied inconsistency with protection of the Convention rights, even in primary legislation. Thus, section 3 introduces a degree of circularity into the position under domestic law, requiring the position under the Convention to be considered even in respect of the proper classification of anti-social behaviour orders in the Crime and Disorder Act 1998 under domestic law principles. Such orders should be construed as criminal if a civil classification would fail to provide all the protections required by the Convention under a criminal classification.

104.

Simon Cordell's Skeleton Argument (2) Pdf

[2003] AC

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

John Bowers QC and *Richard Banwell* for Kensington and Chelsea Royal London Borough Council. Anti-social behaviour orders were specifically introduced in section 1 of the Crime and Disorder Act 1998, as a novel method for the police and local authorities to deter anti-social behaviour and prevent its escalation, without recourse to criminal sanctions. They are a reaction to a widely perceived social problem of crime and disorder. They were not intended to replace or modify existing criminal offences; rather they are primarily preventative in nature.

A useful contrast may be made between anti-social behaviour orders and:

(a) curfew orders under sections 12 and 13 of the Criminal Justice Act 1991 which are available to the court upon conviction of an offence; and (b) the terms of the Protection from Harassment Act 1997 which specifically creates a criminal offence.

An anti-social behaviour order may be properly characterised in effect as, or by analogy, to a quick time injunctive order made in civil proceedings, used to restrain further behaviour which may cause harassment, alarm or distress to the relevant persons in the local government area concerned. Section 1(4) of the 1998 Act thus provides that an order may prohibit the defendant from doing anything described in the order in the future. An order is in terms restricted to the prohibition(s) necessary to protect persons in a defined area from anti-