

Lords, as section I(I){a) of the Administration of Justice Act 1960 only permits an appeal from a decision of the High Court “in any criminal cause or matter”.

Charles Garside QC and *Peter Cadwallader* for the Chief Constable of Greater Manchester. Applications for anti-social behaviour orders are civil proceedings. Any proceedings for the breach of an order are criminal proceedings. It was the intention of Parliament that applications for antisocial behaviour orders should be civil proceedings. That result was affected by section 1 of the 1998 Act,

Criminal proceedings are begun by arrest, charge, and production at court or by laying an information followed by summons or warrant. Applications for anti-social behaviour orders are begun by complaint. That is the method for commencing civil proceedings in magistrates' courts: see Part 2 and sections 51 and 52 of the Magistrates' Courts Act 1980. *Botross v Hammersmith and Fulham London Borough Council* (1994) 93 LGR 268 was a case with special facts. It concerned section 82(1) of the Environmental Protection Act 1990. The Act and that section had a long legislative history going back to 1875. It has been decided in many cases that the nature of such proceedings was criminal, in part, because the sanctions available included a fine. The court concluded that when Parliament enacted the 1990 Act it had made a mistake in legislating for such proceedings to be begun by complaint and had never intended to change the nature of such proceedings.

The procedure for applications for anti-social behaviour orders (section 1(2) of the 1998 Act) and sex offender orders (section 2(2) of the Act) are identical. Applications for sex offenders' orders are civil proceedings: see *B v Chief Constable of Avon and Somerset Constabulary* [2000] 1 WLR 340.

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Simon Cordell's Skeleton Argument (2) Pdf

[2003] 1 AC

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

Applying the three criteria laid down in *Engel v The Netherlands (No 1)* [1979] ECHR 647 to determine whether the proceedings are “criminal” for the purposes of article 6: first, the proceedings for anti-social behaviour orders are classified as civil in domestic law and, second, the defendants are not charged with any offence. As to the third criterion, section 1 of the Act is directed not to the detection, apprehension, trial and punishment of those who have committed crimes, but the restraint of those who have committed anti-social behaviour (which may also amount to a crime) and whose conduct is such that a measure of restraint is necessary to protect members of the public from further anti-social behaviour. The purpose of the proceedings is of importance within the European Jurisprudence: see *Raitondo v Italy* (1994) 18 EHRR 2.37', *Guzzardi v Italy* (1980) 3 EHRR 333. The powers available in those cases was at least as restrictive as those given to the court under section 1 of the Crime and Disorder Act 1998.

Jonathan Crow for the Secretary of State for the Home Department. In determining whether, as a matter of domestic classification, a particular statutory provision forms part of the criminal law, there are two elements: (i) a “prohibited act” and (ii) “penal consequences”: see *Proprietary Articles Trade Association v Attorney General for Canada* [1931] AC 310, 314. In relation to the first limb, the Act itself does not itself “prohibit” the conduct defined in any anti-social behaviour order. In relation to the second limb, it is important to consider the nature of an anti-social behaviour order independently from the possible consequences of any breach. Given that the only act that can logically be said to have been “prohibited” by section 1 is the act which triggers the making of the order, it is only permissible to consider the immediate consequences of that act—not the possible consequences of some other acts in breach of the anti-social behaviour order, that may or may not occur in the future. When