

the procedure under the Act, namely, the application for such an order, and the making of it, and not with the second stage, namely proceedings taken upon an alleged breach of such an order.

Clingham the district judge gave a preliminary ruling on 14 September 2000. In the **McCann** case the recorder gave judgment on an appeal from a stipendiary magistrate on 16 May 2000. E11 both cases the Human Rights Act 1998 is not directly applicable: **R v Kansal (No 2)** [2002] 2 AC 69. The House has, however, been invited by all counsel to deal with the appeals as if the Human Rights Act 1998 is applicable. My understanding is that your Lordships are willing to do so.

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Simon Cordell's Skeleton Argument (2) Pdf

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

Lord Steyn

[2003] AC

The principal issues ^

It is common ground that proceedings taken for breach of an antisocial behaviour order are criminal in character under domestic law and fall within the autonomous concept “a criminal charge” under **article 6** of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as scheduled to the Human Rights Act 1998. The principal general and common questions are:

(a) whether as a matter of domestic classification proceedings leading to the making of an anti-social behaviour order are criminal in nature; and

(b) whether under article 6 of the European Convention such proceedings involve “a criminal charge”. Underlying these questions are two specific issues, namely:

(c) whether under section 1 of the Act hearsay evidence is admissible in proceedings seeking such an order.

24.11.2 what the standard of proof is in such proceedings. The evidential question arises primarily in the **Clingham** case and the question as to standard of proof arises mainly in the **McCann** case. On the other hand, counsel for the defendants to a considerable extent adopted each other's submissions.

Jurisdiction

If under domestic law an application for an anti-social behaviour order under section 1 of the Act properly fails to be classified as civil proceedings, the House may not have jurisdiction in the **Clingham** case. The House has, however, jurisdiction to inquire into its own jurisdiction and to deal with all relevant matters pertinent to that inquiry. Moreover, the jurisdictional issue causes no real problem since the points which arise in the **Clingham** case arguably could arise in the **McCann** case. All parties wish the House to deal with the general and specific issues outlined which could arise in many proceedings under section 1. In these circumstances the jurisdictional question can be considered briefly at the very end of this judgment.

HI Section 1. of the Act and article 6 of the European Convention

In order to render the proceedings and issues intelligible it is necessary to set out section 1. of the Act. It appears in Part I of the Act under the heading “Prevention of Crime and Disorder”. The material parts of section 1 read as follows:

“(1) 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; and (b) that