

social behaviour order is to be made by the local authority. Criminal proceedings cannot be brought by a local authority in Scotland. They can be brought only by or on the authority of the Lord Advocate. Then there is the nature of the procedure that is prescribed by section 19(2). A summary application to the sheriff is defined by section 3 (p) of the Sheriff Courts (Scotland) Act 1907 as including all applications, whether by appeal or otherwise, brought under any Act of Parliament which provides, or, according to any practice in the sheriff court, which allows that the same shall be disposed of in a summary manner, but which does not more particularly define in what form it is to be heard, tried or determined. The long title of the 1907 Act states that it is an Act to regulate and amend the laws and practice relating to the civil procedure in sheriff courts in Scotland. An appeal against the judgment of the sheriff on a summary application lies to the sheriff principal and to the Court of Session, either direct or from the sheriff principal, under sections 27 and 28 of the 1907 Act. The fact that appeals do not lie to the High Court of Justiciary, which has exclusive jurisdiction for the hearing of appeals in criminal cases, is a further sign, if more were needed, that in domestic terms this is a civil proceeding.

It is worth noting that in *S v Miller* 2001 SC 977, 988, para 19 Lord President Rodger said that children's hearings under section 52 of the Children (Scotland) Act 1995, and the related proceedings before the sheriff, have always been regarded as being civil in character, even where they

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contain a ground for referral under section 51(I)(i) which is that the child has committed an offence. In *McGregor v D* 1977 SC 330, 336 Lord President Emslie said, with reference to the provisions of Part III of the Social Work (Scotland) Act 1968 which have now been re-enacted with amendments in Part II of the Children (Scotland) Act 1995, that in no sense were these proceedings criminal proceedings. As he put it, they are on the contrary civil proceedings sui generis. Where the ground of referral is that the child has committed an offence and the sheriff is asked to consider whether this ground has been established under section 68 of the 1995 Act, the standard of proof which must be applied is that which is required in criminal procedure: section 68(3)(b). The Civil Evidence (Scotland) Act 1988 provides for the abolition of corroboration and the admission of hearsay evidence in civil proceedings. But section 9 of that Act excepts from the definition of "civil proceedings" for the purposes of that Act any hearing by a sheriff of an application under what is now Part II of the Children (Scotland) Act 1995 where the ground of referral was that the child has committed an offence. Nevertheless, the proceedings which Parliament has laid down for the determination of these applications by the sheriff is civil procedure. The reason for this, as the Lord President said in *S v Miller* 2001 SC 977, 988, para 20, is that, even though the proceedings may involve establishing that the child has committed an offence, there is no possibility of the child being punished for the offence under them by the imposition of a penalty. This approach is consistent with the principle which was referred to by Lord Wright in *Amand v Home Secretary* [1943] AC 147, 167 where he said that a criminal cause or matter was one which, if carried to its conclusion, might result in the conviction of the person charged and in a sentence of some punishment.

I think that two important points can be derived from these provisions relating to Scotland in support of the proposition that proceedings which are brought in England and Wales under section 1 of the Crime and Disorder Act 1998 are civil proceedings. The first is that the fact that Parliament chose to provide for the use of civil proceedings in applications for anti-social