

classification would fail to provide all the protections required by the Convention under a criminal classification.

<sup>A</sup> *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

<sup>s</sup> 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.

<sup>C</sup> An anti-social behaviour order may be properly characterised in effect as, or by analogy, to a *quia timet* 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

<sup>D</sup> in a defined area from anti-social behaviour (section 1(6)) and is manifestly an order designed to protect in the future, not to punish past misconduct. An analogy to the anti-social behaviour order is the banning order, which may be made by a magistrates' court under section 14B of the Football Spectators Act 1989. Such an order is civil in nature: see *Gough v Chief Constable of the Derbyshire Constabulary* [2002] QB 459. A similar comparison can be

<sup>E</sup> made with disqualification orders under the Company Directors Disqualification Act 1986 which are also not criminal: see *R v Secretary of State for Trade and Industry, Ex p McCormick* [1998] BCC 379.

The making of an anti-social behaviour order does not involve a trial and punishment of the individual concerned. Indeed, section 1(i)(a) of the 1998 Act does not require that a person has caused harassment, alarm or distress, only that the same may be likely to be caused. The contrast between the

<sup>F</sup> provisions of an anti-social behaviour orders and section 5 of the Public Order Act 1986 is also instructive. Section 5 expressly provides that a person using threatening, abusive or insulting words or behaviour within the hearing of a person likely to be caused harassment, alarm and distress is guilty of an offence. There is no attribution of an offence to an anti-social behaviour order.

<sup>C</sup> There is no "overall scheme" to section 1 to which the application for an anti-social behaviour order can be seen as a "preliminary" (non-criminal proceeding) stage. Instead anti-social behaviour orders, like an injunction may be a possible precursor to separate penal proceedings to enforce them as a distinct second stage, but they do not constitute penal proceedings in themselves. Subsequent enforcement proceedings under the 1998 Act for breach are quite separate from the initial application and order. There is no immediate danger of an individual losing his liberty merely because an order is made.

There are other features of the application for an anti-social behaviour order which tend towards it being a civil procedure: (a) Under Section 1(3) of the 1998 Act proceedings are initiated by complaint, the appropriate

procedure for commencing civil proceedings in the magistrates' court; <sup>A</sup>

(b) The requirement to consult each other "relevant authority" and adjoining authorities where an order specifies neighbouring areas, demonstrates that it is not contemplated that penal sanctions be imposed;