

akin to offences under sections 4A and 5 of the Public Order Act 1986 and section 2 of the Protection from Harassment Act 1997 and may lead to restrictions on liberty that constitute a punishment. Although the wording of sections 4A and 5 Public of the 1986 Act is not identical to section 1 of the Crime and Disorder Act 1998, the conduct involved all falls within section 1. Furthermore, there is no limitation placed on the definition of harassment in section 7(2) of the Protection from Harassment Act 1997.

English law contains a number of strict liability offences. The lack of a requirement of intent cannot render the proceedings civil. Furthermore, mens rea in both section 5 of the Public Order Act 1986 and section 2 of the Protection from Harassment Act 1997 offences is knowledge based i.e knew or ought to have known. Most tellingly of all section 1(10) of the Crime and Disorder Act 1998 itself creates an offence without the requirement of intent. It is subject only to a reasonable excuse defence.

Whether a prohibited act leads to criminal proceedings depends upon the consequences arising from the act not the form of the statute within which it is described or the procedure by which proceedings are commenced. The procedure must be looked at in its totality from the beginning to the end. Although proceedings are started by complaint that is not conclusive. An anti social behaviour order makes those against whom they are made subject to the risk of criminal sanctions in respect of conduct that would not otherwise be criminal. Conduct which is criminal in character may well take place only at the stage of breach of an order. Prohibitions against committing criminal offences or defined types of anti social behaviour can be made, breach of which may expose the individual to far more serious penalties than the offence itself. Although it may have been Parliament's intention to create civil rather than criminal proceedings, one has to look at what has been created not what it was intended to create. The fact that there are different stages to the proceedings does not prevent both stages being criminal causes or matters: see *Amand v Home Secretary* [1943] AC 147; *R v Board of Visitors of Hull Prison, Ex p St Germain* [1979] QB 425. Consequently, applications for anti-social behaviour orders are the initial step in a criminal cause or matter.

The second limb of section 1(1) of the Crime and Disorder Act 1998, the requirement of it being "necessary" to make an order is not at odds with the character of the proceedings being criminal Those elements come into play in other criminal proceedings. The first limb constitutes the "offence" the second limb the need for a "penalty".

The fact that a penalty, which may have severe consequences, is described as being imposed to protect the public in the future, and not as a punishment for a crime already committed does not prevent the proceedings being criminal proceedings when the correct test is applied: see *Proprietary Articles Trade Association v Attorney General for Canada* [1931] AC 310; *Customs and Excise Comrs v City of London Magistrates' Courts* [2000] 1 WLR 2020. The object of a penalty by way of sentence is that it seeks to "protect" as well as to "punish" e.g removing an offender from society by custody to prevent further offending. In sentencing protective considerations, rather than society's need to punish the individual, often play the major role in deciding what penalty to impose. Thus, to define an anti-social behaviour order as protective does not in any way diminish its punitive effect.