

Classification in domestic law

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51 I agree with Lord Steyn, for all the reasons that he has given, that proceedings leading to the imposition of an anti-social behaviour order under section 1 of the Crime and Disorder Act 1998 are civil proceedings in domestic law. I should like to add only a few observations to what he has said.

52 Section 19 of the Crime and Disorder Act 1998 provides for the g imposition of anti-social behaviour orders in Scotland. There are some differences of detail in the scheme which this section lays down from that which section 1 lays down for use in England and Wales. But the broad aim

is the same. It is designed to deal with persons who have acted in an antisocial manner or have pursued a course of anti-social conduct that caused or was likely to cause alarm or distress. A conviction for breach of an antisocial behaviour order in Scotland carries with it the same penalties under C section 22(1) as those prescribed for England and Wales by section 1(10).

The important point for present purposes lies in the choice which Parliament has made as to the proceedings which are to be used for making these applications in Scotland. Section 19(2) provides that an application for an anti-social behaviour order shall be made by summary application to the sheriff within whose sheriffdom the alarm or distress was alleged to have D been caused or was likely to have been caused.

53 The question whether a summary application to a sheriff a civil proceeding in Scots domestic law is quite straightforward in comparison with the equivalent and more complex question under English law. This is because the Scottish system has always maintained a firm distinction at levels between criminal and civil procedure. The civil nature of the procedure for the imposition of anti-social behaviour order is indicated at E the outset by the fact that section 19(1) of the Crime and Disorder Act 1998 provides that an application for an anti-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 F 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 C 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.

54 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

A contain a ground for referral under section 52(z)(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 g 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