

- A contain a ground for referral under section 52(2)(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
- B 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
- C 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
- D 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, 162 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
- E sentence of some punishment.
- 55 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 behaviour orders in Scotland strongly suggests
- F that its intention was that applications for these orders which were made in England and Wales should be made by way of civil proceedings also. The grounds on which these applications may be made in both jurisdictions are similar, and the consequences of the making of an anti-social behaviour order are the same. In neither jurisdiction does an anti-social behaviour order have the character of a punishment for an offence such as a fine or
- G imprisonment. The fact that an anti-social behaviour order has been made against him does not appear on the person’s criminal record. On the contrary, the order is described in both section 1(4) and section 19(3) as a prohibition. In this respect it has the character of a civil injunction or, in Scotland, a civil interim interdict. A criminal sanction is available in both jurisdictions if the person is convicted of having breached the order: see
- H section 1(10) for England and Wales and section 22(1) for Scotland. But the proceedings which must be brought in the event of a breach are separate proceedings. Overall, the scheme is so similar in both jurisdictions that the intention of Parliament as to the nature of the proceedings under which the application was to be made can be taken, in the absence of any contrary indication, to have been the same.