

*I The principal issues*

4 It is common ground that proceedings taken for breach of an anti-social behaviour order are criminal in character under domestic law and fall within the autonomous concept “a criminal charge” under article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as scheduled to the Human Rights Act 1998. The principal general and common questions are: (a) whether as a matter of domestic classification proceedings leading to the making of an anti-social behaviour order are criminal in nature; and (b) whether under article 6 of the European Convention such proceedings involve “a criminal charge”. Underlying these questions are two specific issues, namely: (c) whether under section 1 of the Act hearsay evidence is admissible in proceedings seeking such an order; (d) what the standard of proof is in such proceedings. The evidential question arises primarily in the *Clingham* case and the question as to standard of proof arises mainly in the *McCann* case. On the other hand, counsel for the defendants to a considerable extent adopted each other’s submissions.

*II Jurisdiction*

5 If under domestic law an application for an anti-social behaviour order under section 1 of the Act properly falls to be classified as civil proceedings, the House may not have jurisdiction in the *Clingham* case. The House has, however, jurisdiction to inquire into its own jurisdiction and to deal with all relevant matters pertinent to that inquiry. Moreover, the jurisdictional issue causes no real problem since the points which arise in the *Clingham* case arguably could arise in the *McCann* case. All parties wish the House to deal with the general and specific issues outlined which could arise in many proceedings under section 1. In these circumstances the jurisdictional question can be considered briefly at the very end of this judgment.

*III Section 1 of the Act and article 6 of the European Convention*

6 In order to render the proceedings and issues intelligible it is necessary to set out section 1 of the Act. It appears in Part I of the Act under the heading “Prevention of Crime and Disorder”. The material parts of section 1 read as follows:

“(1) An application for an order under this section may be made by a relevant authority if it appears to the authority that the following conditions are fulfilled with respect to any person aged ten or over, namely—(a) that the person has acted, since the commencement date, in an anti-social manner, that is to say, in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself; and (b) that such an order is necessary to protect persons in the local government area in which the harassment, alarm or distress was caused or was likely to be caused from further anti-social acts by him; and in this section ‘relevant authority’ means the council for the local government area or any chief officer of police any part of whose police area lies within that area.