

SERIOUS CRIME ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Serious Crime Prevention Orders

General

Supplementary

Section 35: Proceedings in the High Court

122. This section sets out certain issues relating to proceedings in the High Court. *Subsection (1)* states that proceedings in relation to a serious crime prevention order before the High Court will be civil in nature. This classification will be effective for domestic law purposes. It is also intended that proceedings for an order will be classified as civil rather than criminal for the purposes of Articles 6 and 7 of the European Convention on Human Rights. A consequence of *subsection (1)*, as set out in *subsection (2)*, is that the standard of proof applied by the High Court will be the civil standard. This is only one consequence of the proceedings being classified as civil. There will be other consequences which are not specified in the Act, for example, hearsay evidence will be admissible in the proceedings. In the case of *R (McCann) v. Crown Court at Manchester* [2003] 1 AC 787, the leading case on anti-social behaviour orders, the House of Lords held that although the civil standard of proof would apply in relation to an application for an anti-social behaviour order the standard is a flexible one ranging from proof on the balance of probabilities, at the lowest level, to beyond reasonable doubt, at the highest. The House of Lords stated that they would expect a high standard of proof to be applied in relation to anti-social behaviour order applications, particularly in relation to whether a person has acted in an anti-social manner, and the same principle is likely to apply in relation to applications for serious crime prevention orders.