



House of Commons
NOTICES OF AMENDMENTS
 given on
Tuesday 5 February 2013

For other Amendment(s) see the following page(s):
 Crime and Courts Bill Committee 109-18

PUBLIC BILL COMMITTEE

CRIME AND COURTS BILL [LORDS]

Extradition

Mr Jeremy Browne

NC11

To move the following Clause:—

‘Schedule [*Extradition*] (extradition) has effect.’.

Mr Jeremy Browne

NS1

To move the following Schedule:—

‘EXTRADITION

PART 1

FORUM

Extradition to category 1 countries

- 1 Part 1 of the Extradition Act 2003 (extradition to category 1 territories) is amended as follows.
- 2 In section 11 (bars to extradition)—
 - (a) at the end of subsection (1) insert—

“(j) forum.”;
 - (b) after subsection (1) insert—

“(1A) But the judge is to decide whether the person’s extradition is barred by reason of forum only in a case where the Part 1 warrant contains the statement referred to in section 2(3)

Crime and Courts Bill [*Lords*], *continued*

(warrant issued for purposes of prosecution for offence in category 1 territory).”;

- (c) in subsection (2), for the words from “12” to “apply” substitute “12 to 19F apply”.

3 After section 19A insert—

“19B Forum

- (1) The extradition of a person (“D”) to a category 1 territory is barred by reason of forum if the extradition would not be in the interests of justice.
- (2) For the purposes of this section, the extradition would not be in the interests of justice if the judge—
 - (a) decides that a substantial measure of D’s relevant activity was performed in the United Kingdom; and
 - (b) decides, having regard to the specified matters relating to the interests of justice (and only those matters), that the extradition should not take place.
- (3) These are the specified matters relating to the interests of justice—
 - (a) the place where most of the loss or harm resulting from the extradition offence occurred or was intended to occur;
 - (b) the interests of any victims of the extradition offence;
 - (c) any belief of a prosecutor that the United Kingdom, or a particular part of the United Kingdom, is not an appropriate jurisdiction in which to prosecute D in respect of the conduct constituting the extradition offence;
 - (d) were D to be prosecuted in a part of the United Kingdom for an offence that corresponds to the extradition offence, whether evidence necessary to prove the offence is or could be made available in the United Kingdom;
 - (e) the desirability and practicability of all prosecutions relating to the extradition offence taking place in one jurisdiction, having regard (in particular) to—
 - (i) the jurisdictions in which witnesses, co-defendants and other suspects are located, and
 - (ii) the practicability of the evidence of such persons being given in the United Kingdom or in jurisdictions outside the United Kingdom;
 - (f) D’s connections with the United Kingdom.
- (4) In deciding whether the extradition would not be in the interests of justice, the judge must have regard to the desirability of not requiring the disclosure of material which is subject to restrictions on disclosure in the category 1 territory concerned.
- (5) If, on an application by a prosecutor, it appears to the judge that the prosecutor has considered the offences for which D could be prosecuted in the United Kingdom, or a part of the United Kingdom, in respect of the conduct constituting the extradition offence, the judge must make that prosecutor a party to the proceedings on the question of whether D’s extradition is barred by reason of forum.

Crime and Courts Bill [*Lords*], *continued*

- (6) In this section “D’s relevant activity” means activity which is material to the commission of the extradition offence and which is alleged to have been performed by D.

19C Effect of prosecutor’s certificates on forum proceedings

- (1) The judge hearing proceedings under section 19B (the “forum proceedings”) must decide that the extradition is not barred by reason of forum if (at a time when the judge has not yet decided the proceedings) the judge receives a prosecutor’s certificate relating to the extradition.
- (2) That duty to decide the forum proceedings in that way is subject to the determination of any question relating to the prosecutor’s certificate raised in accordance with section 19E.
- (3) A designated prosecutor may apply for the forum proceedings to be adjourned for the purpose of assisting that or any other designated prosecutor—
- (a) in considering whether to give a prosecutor’s certificate relating to the extradition,
 - (b) in giving such a certificate, or
 - (c) in sending such a certificate to the judge.
- (4) If such an application is made, the judge must—
- (a) adjourn the forum proceedings until the application is decided; and
 - (b) continue the adjournment, for such period as appears to the judge to be reasonable, if the application is granted.
- (5) But the judge must end the adjournment if the application is not granted.

19D Prosecutor’s certificates

- (1) A “prosecutor’s certificate” is a certificate given by a designated prosecutor which—
- (a) certifies both matter A and matter B, and
 - (b) certifies either matter C or matter D.
- (2) Matter A is that a responsible prosecutor has considered the offences for which D could be prosecuted in the United Kingdom, or a part of the United Kingdom, in respect of the conduct constituting the extradition offence.
- (3) Matter B is that the responsible prosecutor has decided that there are one or more such offences that correspond to the extradition offence (the “corresponding offences”).
- (4) Matter C is that—
- (a) the responsible prosecutor has made a formal decision as to the prosecution of D for the corresponding offences,
 - (b) that decision is that D should not be prosecuted for the corresponding offences, and
 - (c) the reason for that decision is a belief that—
 - (i) there would be insufficient admissible evidence for the prosecution; or

Crime and Courts Bill [*Lords*], *continued*

- (ii) the prosecution would not be in the public interest.
- (5) Matter D is that the responsible prosecutor believes that D should not be prosecuted for the corresponding offences because there are concerns about the disclosure of sensitive material in—
 - (a) the prosecution of D for the corresponding offences, or
 - (b) any other proceedings.
- (6) In relation to the extradition of any person to a category 1 country, neither this section nor any other rule of law (whether or not contained in an enactment) may require a designated prosecutor—
 - (a) to consider any matter relevant to giving a prosecutor’s certificate; or
 - (b) to consider whether to give a prosecutor’s certificate.
- (7) In this section “sensitive material” means material which appears to the responsible prosecutor to be sensitive, including material appearing to be sensitive on grounds relating to—
 - (a) national security,
 - (b) international relations, or
 - (c) the prevention or detection of crime (including grounds relating to the identification or activities of witnesses, informants or any other persons supplying information to the police or any other law enforcement agency who may be in danger if their identities are revealed).

19E Questioning of prosecutor’s certificate

- (1) No decision of a designated prosecutor relating to a prosecutor’s certificate in respect of D’s extradition (a “relevant certification decision”) may be questioned except on an appeal under section 26 against an order for that extradition.
- (2) For the purpose of—
 - (a) determining whether to give permission for a relevant certification decision to be questioned, and
 - (b) determining any such question (if that permission is given),
 the High Court must apply the procedures and principles which would be applied by it on an application for judicial review.
- (3) In a case where the High Court quashes a prosecutor’s certificate, the High Court is to decide the question of whether or not the extradition is barred by reason of forum.
- (4) Where the High Court is required to decide that question by virtue of subsection (3)—
 - (a) sections 19B to 19D and this section apply in relation to that decision (with the appropriate modifications) as they apply to a decision by a judge; and
 - (b) in particular—
 - (i) a reference in this section to an appeal under section 26 has effect as a reference to an appeal under section 32 to the Supreme Court;
 - (ii) a reference in this section to the High Court has effect as a reference to the Supreme Court.

Crime and Courts Bill [Lords], continued**19F Interpretation of sections 19B to 19E**

- (1) This section applies for the purposes of sections 19B to 19E (and this section).
- (2) These expressions have the meanings given—
- “D” has the meaning given in section 19B(1);
- “designated prosecutor” means—
- (a) a member of the Crown Prosecution Service, or
 - (b) any other person who—
 - (i) is a prosecutor designated for the purposes of this section by order made by the Secretary of State, or
 - (ii) is within a description of prosecutors so designated;
- “extradition offence” means the offence specified in the Part 1 warrant (including the conduct that constitutes the extradition offence);
- “forum proceedings” has the meaning given in section 19C(1);
- “part of the United Kingdom” means—
- (c) England and Wales;
 - (d) Scotland;
 - (e) Northern Ireland;
- “prosecutor” means a person who has responsibility for prosecuting offences in any part of the United Kingdom (whether or not the person also has other responsibilities);
- “prosecutor’s certificate” has the meaning given in section 19D(1);
- “responsible prosecutor”, in relation to a prosecutor’s certificate, means—
- (f) the designated prosecutor giving the certificate, or
 - (g) another designated prosecutor.
- (3) In determining for any purpose whether an offence corresponds to the extradition offence, regard must be had, in particular, to the nature and seriousness of the two offences.
- (4) A reference to a formal decision as to the prosecution of D for an offence is a reference to a decision (made after complying with, in particular, any applicable requirement concerning a code of practice) that D should, or should not, be prosecuted for the offence.”.

Extradition to category 2 countries

- 4 Part 2 of the Extradition Act 2003 (extradition to category 2 territories) is amended as follows.
- 5 In section 79 (bars to extradition)—
- (a) at the end of subsection (1) insert—

“(e) forum.”;
 - (b) after subsection (1) insert—

“(1A) But the judge is to decide whether the person’s extradition is barred by reason of forum only in a case where the request for extradition contains the statement referred to in section 70(4) (warrant issued for purposes of prosecution for offence in category 2 territory).”;

Crime and Courts Bill [*Lords*], *continued*

- (c) in subsection (2), for “Sections 80 to 83” substitute “Sections 80 to 83E”.

6 After section 83 insert—

“83A Forum

- (1) The extradition of a person (“D”) to a category 2 territory is barred by reason of forum if the extradition would not be in the interests of justice.
- (2) For the purposes of this section, the extradition would not be in the interests of justice if the judge—
 - (a) decides that a substantial measure of D’s relevant activity was performed in the United Kingdom; and
 - (b) decides, having regard to the specified matters relating to the interests of justice (and only those matters), that the extradition should not take place.
- (3) These are the specified matters relating to the interests of justice—
 - (a) the place where most of the loss or harm resulting from the extradition offence occurred or was intended to occur;
 - (b) the interests of any victims of the extradition offence;
 - (c) any belief of a prosecutor that the United Kingdom, or a particular part of the United Kingdom, is not an appropriate jurisdiction in which to prosecute D in respect of the conduct constituting the extradition offence;
 - (d) were D to be prosecuted in a part of the United Kingdom for an offence that corresponds to the extradition offence, whether evidence necessary to prove the offence is or could be made available in the United Kingdom;
 - (e) the desirability and practicability of all prosecutions relating to the extradition offence taking place in one jurisdiction, having regard (in particular) to—
 - (i) the jurisdictions in which witnesses, co-defendants and other suspects are located, and
 - (ii) the practicability of the evidence of such persons being given in the United Kingdom or in jurisdictions outside the United Kingdom;
 - (f) D’s connections with the United Kingdom.
- (4) In deciding whether the extradition would not be in the interests of justice, the judge must have regard to the desirability of not requiring the disclosure of material which is subject to restrictions on disclosure in the category 2 territory concerned.
- (5) If, on an application by a prosecutor, it appears to the judge that the prosecutor has considered the offences for which D could be prosecuted in the United Kingdom, or a part of the United Kingdom, in respect of the conduct constituting the extradition offence, the judge must make that prosecutor a party to the proceedings on the question of whether D’s extradition is barred by reason of forum.
- (6) In this section “D’s relevant activity” means activity which is material to the commission of the extradition offence and is alleged to have been performed by D.

Crime and Courts Bill [*Lords*], *continued***83B Effect of prosecutor's certificates on forum proceedings**

- (1) The judge hearing proceedings under section 83A (the “forum proceedings”) must decide that the extradition is not barred by reason of forum if (at a time when the judge has not yet decided the proceedings) the judge receives a prosecutor's certificate relating to the extradition.
- (2) That duty to decide the forum proceedings in that way is subject to the determination of any question relating to the prosecutor's certificate raised in accordance with section 83D.
- (3) A designated prosecutor may apply for the forum proceedings to be adjourned for the purpose of assisting that or any other designated prosecutor—
 - (a) in considering whether to give a prosecutor's certificate relating to the extradition,
 - (b) in giving such a certificate, or
 - (c) in sending such a certificate to the judge.
- (4) If such an application is made, the judge must—
 - (a) adjourn the forum proceedings until the application is decided; and
 - (b) continue the adjournment, for such period as appears to the judge to be reasonable, if the application is granted.
- (5) But the judge must end the adjournment if the application is not granted.

83C Prosecutor's certificates

- (1) A “prosecutor's certificate” is a certificate given by a designated prosecutor which—
 - (a) certifies both matter A and matter B, and
 - (b) certifies either matter C or matter D.
- (2) Matter A is that a responsible prosecutor has considered the offences for which D could be prosecuted in the United Kingdom, or a part of the United Kingdom, in respect of the conduct constituting the extradition offence.
- (3) Matter B is that the responsible prosecutor has decided that there are one or more such offences that correspond to the extradition offence (the “corresponding offences”).
- (4) Matter C is that—
 - (a) the responsible prosecutor has made a formal decision as to the prosecution of D for the corresponding offences,
 - (b) that decision is that D should not be prosecuted for the corresponding offences, and
 - (c) the reason for that decision is a belief that—
 - (i) there would be insufficient admissible evidence for the prosecution; or
 - (ii) the prosecution would not be in the public interest.

Crime and Courts Bill [*Lords*], *continued*

- (5) Matter D is that the responsible prosecutor believes that D should not be prosecuted for the corresponding offences because there are concerns about the disclosure of sensitive material in—
 - (a) the prosecution of D for the corresponding offences, or
 - (b) any other proceedings.
- (6) In relation to the extradition of any person to a category 2 country, neither this section nor any other rule of law (whether or not contained in an enactment) may require a designated prosecutor—
 - (a) to consider any matter relevant to giving a prosecutor’s certificate; or
 - (b) to consider whether to give a prosecutor’s certificate.
- (7) In this section “sensitive material” means material which appears to the responsible prosecutor to be sensitive, including material appearing to be sensitive on grounds relating to—
 - (a) national security,
 - (b) international relations, or
 - (c) the prevention or detection of crime (including grounds relating to the identification or activities of witnesses, informants or any other persons supplying information to the police or any other law enforcement agency who may be in danger if their identities are revealed).

83D Questioning of prosecutor’s certificate

- (1) No decision of a designated prosecutor relating to a prosecutor’s certificate in respect of D’s extradition (a “relevant certification decision”) may be questioned except on an appeal under section 103 or 108 against an order for that extradition.
- (2) For the purpose of—
 - (a) determining whether to give permission for a relevant certification decision to be questioned, and
 - (b) determining any such question (if that permission is given),the High Court must apply the procedures and principles which would be applied by it on an application for judicial review.
- (3) In a case where the High Court quashes a prosecutor’s certificate, the High Court is to decide the question of whether or not the extradition is barred by reason of forum.
- (4) Where the High Court is required to decide that question by virtue of subsection (3)—
 - (a) sections 83A to 83C and this section apply in relation to that decision (with the appropriate modifications) as they apply to a decision by a judge; and
 - (b) in particular—
 - (i) a reference in this section to an appeal under section 103 or 108 has effect as a reference to an appeal under section 114 to the Supreme Court;
 - (ii) a reference in this section to the High Court has effect as a reference to the Supreme Court.

Crime and Courts Bill [Lords], continued**83E Interpretation of sections 83A to 83D**

- (1) This section applies for the purposes of sections 83A to 83D (and this section).
- (2) These expressions have the meanings given—
 - “D” has the meaning given in section 83A(1);
 - “designated prosecutor” means—
 - (h) a member of the Crown Prosecution Service, or
 - (i) any other person who—
 - (i) is a prosecutor designated for the purposes of this section by order made by the Secretary of State, or
 - (ii) is within a description of prosecutors so designated;
 - “extradition offence” means the offence specified in the request for extradition (including the conduct that constitutes the extradition offence);
 - “forum proceedings” has the meaning given in section 83B(1);
 - “part of the United Kingdom” means—
 - (j) England and Wales;
 - (k) Scotland;
 - (l) Northern Ireland;
 - “prosecutor” means a person who has responsibility for prosecuting offences in any part of the United Kingdom (whether or not the person also has other responsibilities);
 - “prosecutor’s certificate” has the meaning given in section 83C(1);
 - “responsible prosecutor”, in relation to a prosecutor’s certificate, means—
 - (m) the designated prosecutor giving the certificate, or
 - (n) another designated prosecutor.
- (3) In determining for any purpose whether an offence corresponds to the extradition offence, regard must be had, in particular, to the nature and seriousness of the two offences.
- (4) A reference to a formal decision as to the prosecution of D for an offence is a reference to a decision (made after complying with, in particular, any applicable requirement concerning a code of practice) that D should, or should not, be prosecuted for the offence.”.

Transitional provision, saving and repeals

- 7 (1) In a case where the Part 1 warrant, or the request for the person’s extradition, has been issued before the time when the amendments made by this Part of this Schedule come into force, those amendments apply to the extradition concerned only if, at that time, the judge has not yet decided all of the existing extradition bar questions.
- (2) For that purpose—
 - “existing extradition bar questions” means—
 - (a) the questions in section 11(1) of the Extradition Act 2003 (in the case of a Part 1 warrant), or
 - (b) the questions in section 79(1) of that Act (in the case of a request for the person’s extradition),

Crime and Courts Bill [*Lords*], *continued*

as those questions stand before their amendment by this paragraph;

“Part 1 warrant” and “request for a person’s extradition” have the same meanings as in the Extradition Act 2003.

8 The powers conferred by section 177, 178 and 222 of the Extradition Act 2003 are exercisable in relation to any amendment of that Act made by this Part of this Schedule.

9 In the Police and Justice Act 2006, in Schedule 13 (extradition), in Part 1 (amendments to the Extradition Act 2003), omit paragraphs 4 to 6 (and the italic heading preceding paragraph 4).

PART 2

HUMAN RIGHTS ISSUES

Extradition to category 2 territories

10 Part 2 of the Extradition Act 2003 (extradition to category 2 territories) is amended as follows.

11 In section 70 (extradition request and certificate), after subsection (9) insert—

“(10) Subsection (11) applies at all times after the Secretary of State issues a certificate under this section.

(11) The Secretary of State is not to consider whether the extradition would be compatible with the Convention rights within the meaning of the Human Rights Act 1998.”.

12 In section 108 (appeal against extradition order)—

(a) after subsection (4) insert—

“(5) But notice of an appeal under this section may be given after the end of the permitted period if it is an appeal on human rights grounds.

(6) Notice of any such appeal must be given in accordance with rules of court at a time before the person is extradited to the category 2 country in accordance with section 117.

(7) Where notice of an appeal is given in accordance with subsections (5) and (6), the High Court is to consider the appeal only if it appears to the High Court that—

(a) the appeal is necessary to avoid real injustice, and

(b) the circumstances are exceptional and make it appropriate to consider the appeal.

(8) In this section “appeal on human rights grounds” means an appeal against the order for the person’s extradition on the grounds (and only on the grounds) that the extradition would not be compatible with the Convention rights within the meaning of the Human Rights Act 1998.”.

13 In section 117 (extradition where no appeal), after subsection (4) insert—

“(5) If a person brings an appeal under section 108 by virtue of subsection (5) of that section, this section ceases to apply (but section 118 applies instead).”.

Crime and Courts Bill [Lords], continued
Transitional provision and saving

- 14 (1) In a case where a request for a person's extradition has been issued before the time when the amendments made by this Part of this Schedule come into force, those amendments apply to the extradition concerned only if—
- (a) the person concerned has not made any human rights representations to the Secretary of State during the relevant period, or
 - (b) the person concerned has made such representations during that period and the Secretary of State has finished considering them by the end of that period.
- (2) For that purpose—
- “human rights representations” means representations that the extradition would not be compatible with the Convention rights within the meaning of the Human Rights Act 1998;
- “relevant period” means the period that—
- (c) begins when the Secretary of State issues a certificate under section 70 of the Extradition Act 2003 in relation to the extradition, and
 - (d) ends when the amendments made by this paragraph come into force;
- “request for a person's extradition” has the same meaning as in the Extradition Act 2003.
- 15 The powers conferred by section 177, 178 and 222 of the Extradition Act 2003 are exercisable in relation to any amendment of that Act made by this Part of this Schedule.

PART 3

DEVOLUTION ISSUES IN SCOTLAND

Extradition to category 1 countries

- 16 Part 1 of the Extradition Act 2003 (extradition to category 1 territories) is amended as follows.
- 17 (1) In section 30 (detention pending conclusion of appeal under section 28), for subsection (5) substitute—
- “(5) The proceeding provisions of this section do not apply to Scotland.”.
- (2) After section 30 insert—
- “30A Detention pending conclusion of appeal under section 28: Scotland**
- (1) This section applies if immediately after the judge orders the person's discharge the judge is informed by the authority which issued the Part 1 warrant (“the issuing authority”) that it intends to appeal under section 28 (“the High Court appeal”).
 - (2) The judge must remand the person in custody or on bail while the High Court appeal is pending.
 - (3) The High Court appeal ceases to be pending at the earliest of these times—
 - (a) when the proceedings on the appeal are abandoned;
 - (b) when the High Court—
 - (i) allows the appeal, or
 - (ii) dismisses the appeal.

Crime and Courts Bill [*Lords*], *continued*

- (4) If—
- (a) the High Court appeal is dismissed, and
 - (b) immediately after dismissing it, the High Court is informed by the issuing authority that it intends to bring an appeal to the Supreme Court against a determination of a relevant devolution issue (“the Supreme Court appeal”),
- the High Court must remand the person in custody or on bail while the Supreme Court appeal is pending.
- (5) The Supreme Court appeal ceases to be pending at the earliest of these times—
- (a) the end of the period of 28 days starting with the day when the High Court appeal is dismissed (unless, within that period, an application is made to the High Court for permission to make the Supreme Court appeal);
 - (b) the end of the period of 28 days starting with the day when the High Court refuses permission to make the Supreme Court appeal (unless, within that period, an application is made to the Supreme Court for permission to make the Supreme Court appeal);
 - (c) the end of the period of 28 days starting with the day on which permission is given to bring the Supreme Court appeal (unless the appeal is brought within that period);
 - (d) the time when the proceedings on the Supreme Court appeal are abandoned;
 - (e) the time when there is no further step that can be taken in relation to the Supreme Court appeal by the issuing authority (ignoring any power of a court to grant leave to take a step out of time).
- (6) If the person is remanded in custody by the judge or the High Court, the High Court may later grant bail.
- (7) In this section “relevant devolution issue” means a devolution issue relating to the person’s extradition.
- (8) This section applies only to Scotland.”.

18 After section 33 insert—

“33ZA Scottish devolution issue: remand in custody or on bail

- (1) This section applies where, on an appeal to the Supreme Court against a determination of a devolution issue relating to a person’s extradition under this Part, the Supreme Court—
 - (a) remits the case to the High Court, or
 - (b) orders the person’s extradition.
- (2) The Supreme Court must remand the person in custody or on bail pending the person’s extradition.
- (3) If the Supreme Court remands the person in custody it may later grant bail.”.

19 After section 33A insert—

Crime and Courts Bill [*Lords*], *continued***“33B Detention pending conclusion of appeals relating to devolution issues**

- (1) This section applies if immediately after the High Court orders the person’s discharge the court is informed by the authority which issued the Part 1 warrant (“the issuing authority”) that it intends to bring an appeal to the Supreme Court against a determination of a relevant devolution issue (“the Supreme Court appeal”).
 - (2) The High Court must remand the person in custody or on bail while the Supreme Court appeal is pending.
 - (3) If the court remands the person in custody it may later grant bail.
 - (4) The Supreme Court appeal ceases to be pending at the earliest of these times—
 - (a) the end of the period of 28 days starting with the day when the High Court orders the person’s discharge (unless, within that period, an application is made to the High Court for permission to make the Supreme Court appeal);
 - (b) the end of the period of 28 days starting with the day when the High Court refuses permission to make the Supreme Court appeal (unless, within that period, an application is made to the Supreme Court for permission to make the Supreme Court appeal);
 - (c) the end of the period of 28 days starting with the day on which permission is given to bring the Supreme Court appeal (unless the appeal is brought within that period);
 - (d) the time when the proceedings on the Supreme Court appeal are abandoned;
 - (e) the time when there is no further step that can be taken in relation to the Supreme Court appeal by the issuing authority (ignoring any power of a court to grant permission to take a step out of time).
 - (5) In this section “relevant devolution issue” means a devolution issue relating to the person’s extradition.
 - (6) This section applies only to Scotland.”
- 20 In section 34 (appeals: general), at the beginning insert “(1)” and at the end insert—
- “(2) Subsection (1) does not prevent an appeal against a determination of a devolution issue.
 - (3) In this Part “devolution issue” has the same meaning as in Schedule 6 to the Scotland Act 1998.”.
- 21 (1) In section 36 (extradition following appeal), for subsection (9) substitute—
- “(9) The preceding provisions of this section do not apply to Scotland.”.
- (2) After that section insert—

“36A Extradition following appeal: Scotland

- (1) This section applies if—
 - (a) there is an appeal to the High Court under section 26 against an order for a person’s extradition to a category 1 territory, and

Crime and Courts Bill [Lords], continued

- (b) the effect of the decision in the relevant proceedings is that the person must be extradited to the category 1 territory.
- (2) The “relevant proceedings” are—
- (a) the proceedings on the appeal under section 26 if—
 - (i) no Supreme Court devolution appeal is made, or
 - (ii) a Supreme Court devolution appeal is made and the Supreme Court remits the case to the High Court, or
 - (b) the proceedings on a Supreme Court devolution appeal if such an appeal is made and the Supreme Court does not remit the case to the High Court.
- (3) The person must be extradited to the category 2 territory before the end of the required period, which is 28 days starting with—
- (a) the day on which the decision in the relevant proceedings becomes final, or
 - (b) the day on which the relevant proceedings are abandoned.
- (4) In a case where the relevant proceedings are proceedings on the appeal under section 26 (except where the case has been remitted to the High Court on a Supreme Court devolution appeal), the decision in those proceedings becomes final—
- (a) the end of the period of 28 days starting with the day of the decision (unless, within that period, an application is made to the High Court for permission to make a Supreme Court devolution appeal);
 - (b) the end of the period of 28 days starting with the day when the High Court refuses permission to make a Supreme Court devolution appeal (unless, within that period, an application is made to the Supreme Court for permission to make that appeal);
 - (c) when the Supreme Court refuses permission to make a Supreme Court devolution appeal;
 - (d) at the end of the permitted period, which is 28 days starting with the day on which permission to make a Supreme Court devolution appeal is granted, if no such appeal is brought before the end of that period.
- (5) These must be ignored for the purposes of subsection (4)—
- (a) any power of a court to extend the period permitted for applying for permission to appeal;
 - (b) any power of a court to grant permission to take a step out of time.
- (6) In a case where—
- (a) the relevant proceedings are proceedings on the appeal under section 26, and
 - (b) the case has been remitted to the High Court on a Supreme Court devolution appeal,
- the decision in those proceedings becomes final when it is made.
- (7) In a case where—
- (a) the relevant proceedings are proceedings on a Supreme Court devolution appeal, and
 - (b) the decision is not to remit the case to the High Court,

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the decision in those proceedings becomes final when it is made.

- (8) If subsection (3) is not complied with and the person applies to the appropriate judge to be discharged, the judge must order the person's discharge, unless reasonable cause is shown for the delay.
- (9) In this section "Supreme Court devolution appeal" means an appeal to the Supreme Court against a determination of a devolution issue relating to a person's extradition.
- (10) This section applies only to Scotland."

Extradition to category 2 countries

22 Part 2 of the Extradition Act 2003 (extradition to category 2 territories) is amended as follows.

23 (1) In section 107 (detention pending conclusion of appeal under section 105), for subsection (5) substitute—

“(5) The proceeding provisions of this section do not apply to Scotland.”.

(2) After section 107 insert—

“107A Detention pending conclusion of appeal under section 105: Scotland

- (1) This section applies if immediately after the judge orders the person's discharge the judge is informed on behalf of the category 2 territory of an intention to appeal under section 105 (“the High Court appeal”).
- (2) The judge must remand the person in custody or on bail while the High Court appeal is pending.
- (3) The High Court appeal ceases to be pending at the earliest of these times—
 - (a) when the proceedings on the appeal are abandoned;
 - (b) when the High Court—
 - (i) allows the appeal,
 - (ii) makes a direction under section 106(1)(b), or
 - (iii) dismisses the appeal.
- (4) If—
 - (a) the High Court appeal is dismissed, and
 - (b) immediately after dismissing it, the High Court is informed of an intention to bring an appeal to the Supreme Court against a determination of a relevant devolution issue (“the Supreme Court appeal”),
 the High Court must remand the person in custody or on bail while the Supreme Court appeal is pending.
- (5) The Supreme Court appeal ceases to be pending at the earliest of these times—
 - (a) the end of the period of 28 days starting with the day when the High Court appeal is dismissed (unless, within that period, an application is made to the High Court for permission to make the Supreme Court appeal);
 - (b) the end of the period of 28 days starting with the day when the High Court refuses permission to make the Supreme Court appeal (unless, within that period, an application is made to

Crime and Courts Bill [*Lords*], *continued*

- the Supreme Court for permission to make the Supreme Court appeal);
- (c) the end of the period of 28 days starting with the day on which permission is given to bring the Supreme Court appeal (unless the appeal is brought within that period);
 - (d) the time when the proceedings on the Supreme Court appeal are abandoned;
 - (e) the time when there is no further step that can be taken in relation to the Supreme Court appeal by the category 2 territory (ignoring any power of a court to grant leave to take a step out of time).
- (6) If the person is remanded in custody by the judge or the High Court, the appropriate judge may later grant bail.
 - (7) In this section “relevant devolution issue” means a devolution issue relating to the person’s extradition.
 - (8) This section applies only to Scotland.”.
- 24 (1) In section 112 (detention pending conclusion of appeal under section 110), for subsection (5) substitute—
- “(5) The proceeding provisions of this section do not apply to Scotland.”.
- (2) After section 112 insert—

“112A Detention pending conclusion of appeal under section 110: Scotland

- (1) This section applies in a case where the Scottish Ministers order the person’s discharge under this Part.
- (2) Subject to subsection (6)—
 - (a) the order made by the appropriate judge under section 92(4) (“the remand order”) remains in force until the end of the period of three days beginning with the day on which the person’s discharge is ordered;
 - (b) if within that period the Scottish Ministers are informed in writing on behalf of the category 2 territory of an intention to appeal under section 110 (“the High Court appeal”), the remand order remains in force while the appeal is pending.
- (3) The High Court appeal ceases to be pending at the earliest of these times—
 - (a) when the proceedings on the appeal are abandoned;
 - (b) when the High Court—
 - (i) allows the appeal, or
 - (ii) dismisses the appeal.
- (4) If—
 - (a) the High Court appeal is dismissed,
 - (b) immediately after dismissing it, the High Court is informed of an intention to bring an appeal to the Supreme Court against a determination of a relevant devolution issue (“the Supreme Court appeal”), and
 - (c) the remand order has remained in force until that time,
 then, subject to subsection (6), the remand order continues to remain in force while the Supreme Court appeal is pending.

Crime and Courts Bill [*Lords*], *continued*

- (5) The Supreme Court appeal ceases to be pending at the earliest of these times—
- (a) the end of the period of 28 days starting with the day when the High Court appeal is dismissed (unless, within that period, an application is made to the High Court for permission to make the Supreme Court appeal);
 - (b) the end of the period of 28 days starting with the day when the High Court refuses permission to make the Supreme Court appeal (unless, within that period, an application is made to the Supreme Court for permission to make the Supreme Court appeal);
 - (c) the end of the period of 28 days starting with the day on which permission is given to bring the Supreme Court appeal (unless the appeal is brought within that period);
 - (d) the time when the proceedings on the Supreme Court appeal are abandoned;
 - (e) the time when there is no further step that can be taken in relation to the Supreme Court appeal by the category 2 territory (ignoring any power of a court to grant leave to take a step out of time).
- (6) If the person is remanded in custody under section 92(4), the appropriate judge may later grant bail.
- (7) In this section “relevant devolution issue” means a devolution issue relating to the person’s extradition.
- (8) This section applies only to Scotland.”.

25 After section 115A insert—

“115B Detention pending conclusion of appeals relating to devolution issues

- (1) This section applies if—
- (a) on an appeal under section 103 or 108 the High Court orders the person’s discharge;
 - (b) immediately after ordering the person’s discharge, the High Court is informed of an intention to bring an appeal to the Supreme Court against a determination of a relevant devolution issue (“the Supreme Court appeal”).
- (2) The High Court must remand the person in custody or on bail while the Supreme Court appeal is pending.
- (3) If the court remands the person in custody it may later grant bail.
- (4) The Supreme Court appeal ceases to be pending at the earliest of these times—
- (a) the end of the period of 28 days starting with the day when the High Court orders the person’s discharge (unless, within that period, an application is made to the High Court for permission to make the Supreme Court appeal);
 - (b) the end of the period of 28 days starting with the day when the High Court refuses permission to make the Supreme Court appeal (unless, within that period, an application is made to the Supreme Court for permission to make the Supreme Court appeal);

Crime and Courts Bill [*Lords*], *continued*

- (c) the end of the period of 28 days starting with the day on which permission is given to bring the Supreme Court appeal (unless the appeal is brought within that period);
 - (d) the time when the proceedings on the Supreme Court appeal are abandoned;
 - (e) the time when there is no further step that can be taken in relation to the Supreme Court appeal (ignoring any power of a court to grant leave to take a step out of time).
- (5) In this section “relevant devolution issue” means a devolution issue relating to the person’s extradition.
- (6) This section applies only to Scotland.”
- 26 In section 116 (appeals: general), at the beginning insert “(1)” and at the end insert—
- “(2) Subsection (1) does not prevent an appeal against a determination of a devolution issue.
- (3) In this Part “devolution issue” has the same meaning as in Schedule 6 to the Scotland Act 1998.”
- 27 (1) In section 118 (extradition following appeal), for subsection (8) substitute—
- “(8) The preceding provisions of this section do not apply to Scotland.”.
- (2) After that section insert—

“118A Extradition following appeal: Scotland

- (1) This section applies if—
 - (a) there is an appeal to the High Court under section 103, 108 or 110 against a decision or order relating to a person’s extradition to a category 2 territory, and
 - (b) the effect of the decision in the relevant proceedings is that the person must be extradited to the category 2 territory.
- (2) The “relevant proceedings” are—
 - (a) the proceedings on the appeal under section 103, 108 or 110 if—
 - (i) no Supreme Court devolution appeal is made, or
 - (ii) a Supreme Court devolution appeal is made and the Supreme Court remits the case to the High Court, or
 - (b) the proceedings on a Supreme Court devolution appeal if such an appeal is made and the Supreme Court does not remit the case to the High Court.
- (3) The person must be extradited to the category 2 territory before the end of the required period, which is 28 days starting with—
 - (a) the day on which the decision in the relevant proceedings becomes final, or
 - (b) the day on which the relevant proceedings are abandoned.
- (4) In a case where the relevant proceedings are proceedings on the appeal under section 103, 108 or 110 (except the case has been remitted to the High Court on a Supreme Court devolution appeal), the decision in those proceedings becomes final—
 - (a) at the end of the period of 28 days starting with the day of the High Court’s decision on the appeal (unless, within that

Crime and Courts Bill [Lords], continued

- period, an application is made to the High Court for permission to make a Supreme Court devolution appeal);
- (b) at the end of the period of 28 days starting with the day when the High Court refuses permission to make a Supreme Court devolution appeal (unless, within that period, an application is made to the Supreme Court for permission to make the appeal);
 - (c) when the Supreme Court refuses permission to make a Supreme Court devolution appeal;
 - (d) at the end of the permitted period, which is 28 days starting with the day on which permission to make a Supreme Court devolution appeal is granted, if no such appeal is brought before the end of that period.
- (5) These must be ignored for the purposes of subsection (4)—
- (a) any power of a court to extend the period permitted for applying for permission to appeal;
 - (b) any power of a court to grant permission to take a step out of time.
- (6) In a case where—
- (a) the relevant proceedings are proceedings on the appeal under section 103, 108 or 110, and
 - (b) the case has been remitted to the High Court on a Supreme Court devolution appeal,
- the decision in those proceedings becomes final when it is made.
- (7) In a case where—
- (a) the relevant proceedings are proceedings on a Supreme Court devolution appeal, and
 - (b) the decision is not to remit the case to the High Court,
- the decision in those proceedings becomes final when it is made.
- (8) If subsection (2) is not complied with and the person applies to the appropriate judge to be discharged, the judge must order the person's discharge, unless reasonable cause is shown for the delay.
- (9) In this section "Supreme Court devolution appeal" means an appeal to the Supreme Court against a determination of a devolution issue relating to a person's extradition.
- (10) This section applies only to Scotland."
- 28 After section 118A (inserted by paragraph 27) insert—

"118B Scottish devolution issue: remand in custody or on bail

- (1) This section applies where, on an appeal to the Supreme Court against a determination of a devolution issue relating to a person's extradition under this Part, the Supreme Court—
 - (a) remits the case to the High Court, or
 - (b) orders the person's extradition.
- (2) The Supreme Court must remand the person in custody or on bail pending the person's extradition.
- (3) If the Supreme Court remands the person in custody, the High Court may later grant bail."

Crime and Courts Bill [*Lords*], *continued*
Saving

- 29 The powers conferred by section 177, 178 and 222 of the Extradition Act 2003 are exercisable in relation to any amendment of that Act made by this Part of this Schedule.’

Civil recovery of the proceeds etc of unlawful conduct

Mr Jeremy Browne

NC12

To move the following Clause:—

- ‘(1) Part 5 of the Proceeds of Crime Act 2002 (civil recovery of the proceeds etc of unlawful conduct) is amended as follows.
- (2) After section 282 insert—

*“Scope of powers***282A Scope of powers**

- (1) An order under this Chapter may be made by the High Court or the Court of Session—
- (a) in respect of property wherever situated, and
 - (b) in respect of a person wherever domiciled, resident or present, subject to subsection (2).
- (2) Such an order may not be made by the High Court or the Court of Session in respect of—
- (a) property that is outside the United Kingdom, or
 - (b) property that is in the United Kingdom but outside the relevant part of the United Kingdom,
- unless there is or has been a connection between the case and the relevant part of the United Kingdom.
- (3) The circumstances in which there is or has been such a connection include those described in Schedule 7A.
- (4) “The relevant part of the United Kingdom” means—
- (a) in relation to an order made by the High Court in England and Wales, England and Wales,
 - (b) in relation to an order made by the High Court in Northern Ireland, Northern Ireland, and
 - (c) in relation to an order made by the Court of Session, Scotland.”
- (3) After Schedule 7 insert—

“SCHEDULE 7A

Section 282A

CONNECTION WITH RELEVANT PART OF UNITED KINGDOM

Unlawful conduct

- 1 There is a connection where the unlawful conduct occurred entirely or partly in the relevant part of the United Kingdom.

Crime and Courts Bill [*Lords*], *continued**Property*

- 2 There has been a connection where the property in question has been in the relevant part of the United Kingdom, but only if it was recoverable property in relation to the unlawful conduct for some or all of the time it was there.
- 3 There is a connection where there is other property in the relevant part of the United Kingdom that is recoverable property in relation to the unlawful conduct.
- 4 There has been a connection where, at any time, there has been other property in the relevant part of the United Kingdom that, at the time, was recoverable property in relation to the unlawful conduct.

Person

- 5 (1) There is or has been a connection where a person described in subparagraph (2)—
- (a) is linked to the relevant part of the United Kingdom,
 - (b) was linked to that part of the United Kingdom at a time when the unlawful conduct, or some of the unlawful conduct, was taking place, or
 - (c) has been linked to that part of the United Kingdom at any time since that conduct took place.
- (2) Those persons are—
- (a) a person whose conduct was, or was part of, the unlawful conduct;
 - (b) a person who was deprived of property by the unlawful conduct;
 - (c) a person who holds the property in question;
 - (d) a person who has held the property in question, but only if it was recoverable property in relation to the unlawful conduct at the time;
 - (e) a person who holds other property that is recoverable property in relation to the unlawful conduct;
 - (f) a person who, at any time, has held other property that was recoverable property in relation to the unlawful conduct at the time.
- (3) A person is linked to the relevant part of the United Kingdom if the person is—
- (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,
 - (b) a person who, under the British Nationality Act 1981, is a British subject,
 - (c) a British protected person within the meaning of that Act,
 - (d) a body incorporated or constituted under the law of any part of the United Kingdom, or
 - (e) a person domiciled, resident or present in the relevant part of the United Kingdom.

Crime and Courts Bill [*Lords*], *continued*
Property held on trust

- 6 (1) There is a connection where the property in question is property held on trust, or an interest in property held on trust, and—
- (a) the trust arises under the law of any part of the United Kingdom,
 - (b) the trust is entirely or partly governed by the law of any part of the United Kingdom,
 - (c) one or more of the trustees is linked to the relevant part of the United Kingdom, or
 - (d) one or more of the beneficiaries of the trust is linked to the relevant part of the United Kingdom.
- (2) A person is linked to the relevant part of the United Kingdom if the person falls within paragraph 5(3).
- (3) “Beneficiaries” includes beneficiaries with a contingent interest in the trust property and potential beneficiaries.

Interpretation

- 7 “The relevant part of the United Kingdom” has the meaning given in section 282A(4).
- 8 “The unlawful conduct” means—
- (a) in a case in which the property in question was obtained through unlawful conduct, that conduct,
 - (b) in a case in which the property in question represents property obtained through unlawful conduct, that conduct, or
 - (c) in a case in which it is shown that the property in question was obtained through unlawful conduct of one of a number of kinds or represents property so obtained (see section 242(2)(b)), one or more of those kinds of conduct.”
- (4) Omit section 286 (scope of powers: Scotland).
- (5) In section 316 (general interpretation), after subsection (8A) insert—
- “(8B) An enforcement authority in relation to a part of the United Kingdom may take proceedings there for an order under Chapter 2 of this Part in respect of any property or person, whether or not the property or person is (or is domiciled, resident or present) in that part of the United Kingdom.”
- (6) In Schedule [*Proceeds of crime: civil recovery of the proceeds etc of unlawful conduct*] (proceeds of crime: civil recovery of the proceeds etc of unlawful conduct)—
- (a) Part 1 makes provision about the enforcement of interim orders in the United Kingdom, and
 - (b) Part 2 makes provision about enforcement where property or evidence is outside the United Kingdom.
- (7) The amendments made by this section and Part 2 of Schedule [*Proceeds of crime: civil recovery of the proceeds etc of unlawful conduct*] are deemed always to have had effect.
- (8) The amendments made by this section and Schedule [*Proceeds of crime: civil recovery of the proceeds etc of unlawful conduct*] do not affect the extent to which provisions of the Proceeds of Crime Act 2002 (other than Chapter 2 of Part

Crime and Courts Bill [*Lords*], *continued*

5), or of any other enactment, apply in respect of persons or property outside the United Kingdom or outside a particular part of the United Kingdom.’

Mr Jeremy Browne

NS2

To move the following Schedule:—

‘PROCEEDS OF CRIME: CIVIL RECOVERY OF THE PROCEEDS ETC OF UNLAWFUL CONDUCT

PART 4

ENFORCEMENT OF INTERIM ORDERS IN THE UNITED KINGDOM

- 1 Section 18 of the Civil Jurisdiction and Judgments Act 1982 (enforcement of UK judgments in other parts of UK) is amended as follows.
- 2 In subsection (5)(d) (provisional measures), at the end insert “or an interim order made in connection with the civil recovery of proceeds of unlawful conduct”.
- 3 After subsection (6) insert—
 - “(6A) In subsection (5)(d), “an interim order made in connection with the civil recovery of proceeds of unlawful conduct” means any of the following made under Chapter 2 of Part 5 of the Proceeds of Crime Act 2002—
 - (a) a property freezing order or prohibitory property order;
 - (b) an order under section 245E or 245F of that Act (order relating to receivers in connection with property freezing order);
 - (c) an interim receiving order or interim administration order.”

PART 5

PROPERTY OR EVIDENCE OUTSIDE THE UNITED KINGDOM

- 4 Part 5 of the Proceeds of Crime Act 2002 (civil recovery of the proceeds etc of unlawful conduct) is amended as follows.
- 5 In section 280 (applying realised proceeds), in subsection (1), for “This section applies to” substitute “Subsection (2) applies to sums which are in the hands of the trustee for civil recovery if they are”.
- 6 After section 282A insert—

“Enforcement outside the United Kingdom

282B Enforcement abroad before recovery order: enforcement authority

- (1) This section applies if—
 - (a) the property freezing conditions are met in relation to property,
 - (b) the property is not property to which a recovery order applies, and
 - (c) an enforcement authority believes that the property is in a country outside the United Kingdom (the receiving country).
- (2) The property freezing conditions are—
 - (a) in England and Wales and Northern Ireland, the conditions in section 245A(5) and (6), and

Crime and Courts Bill [*Lords*], *continued*

- (b) in Scotland, the conditions in section 255A(5) and (6), and, for the purposes of this subsection, the references in those provisions to property to which the application for the order relates are to be read as references to the property mentioned in subsection (1)(a).
- (3) The enforcement authority may send a request for assistance in relation to the property to the Secretary of State with a view to it being forwarded under this section.
- (4) The Secretary of State may forward the request for assistance to the government of the receiving country.
- (5) A request for assistance under this section is a request to the government of the receiving country—
- (a) to secure that any person is prohibited from dealing with the property;
 - (b) for assistance in connection with the management of the property, including with securing its detention, custody or preservation.

282C Enforcement abroad before recovery order: receiver or administrator

- (1) This section applies if—
- (a) a property freezing order has effect in relation to property, and
 - (b) the receiver appointed under section 245E in respect of the property believes that it is in a country outside the United Kingdom (the receiving country).
- (2) This section also applies if—
- (a) an interim receiving order or interim administration order has effect in relation to property, and
 - (b) the interim receiver or interim administrator believes that the property is in a country outside the United Kingdom (the receiving country).
- (3) The receiver or administrator may send a request for assistance in relation to the property to the Secretary of State with a view to it being forwarded under this section.
- (4) The Secretary of State must forward the request for assistance to the government of the receiving country.
- (5) A request for assistance under this section is a request to the government of the receiving country—
- (a) to secure that any person is prohibited from dealing with the property;
 - (b) for assistance in connection with the management of the property, including with securing its detention, custody or preservation.

282D Evidence overseas: interim receiver or interim administrator

- (1) This section applies if—
- (a) an interim receiving order or interim administration order has effect in relation to property, and
 - (b) the order requires the interim receiver or interim administrator to take steps to establish a matter described in section 247(2)(a) or (b) or 257(2)(a) or (b).

Crime and Courts Bill [*Lords*], *continued*

- (2) The interim receiver or interim administrator may request assistance under this section if the interim receiver or interim administrator thinks that there is relevant evidence in a country outside the United Kingdom.
- (3) A judge of the High Court may request assistance under this section if—
 - (a) an application is made by the interim receiver or by a person subject to investigation by the interim receiver, and
 - (b) the judge thinks that there is relevant evidence in a country outside the United Kingdom.
- (4) A judge of the Court of Session may request assistance under this section if—
 - (a) an application is made by the interim administrator or by a person subject to investigation by the interim administrator, and
 - (b) the judge thinks that there is relevant evidence in a country outside the United Kingdom.
- (5) The assistance that may be requested under this section is assistance in obtaining outside the United Kingdom relevant evidence specified in the request.
- (6) Relevant evidence is—
 - (a) in relation to an application or request made for the purposes of an investigation by an interim receiver, evidence as to a matter described in section 247(2)(a) or (b);
 - (b) in relation to an application or request made for the purposes of an investigation by an interim administrator, evidence as to a matter described in section 257(2)(a) or (b).
- (7) A request for assistance under this section may be sent—
 - (a) to a court or tribunal which is specified in the request and which exercises jurisdiction in the place where the evidence is to be obtained,
 - (b) to the government of the country concerned, or
 - (c) to an authority recognised by the government of the country concerned as the appropriate authority for receiving requests for assistance of that kind.
- (8) Alternatively, a request for assistance under this section may be sent to the Secretary of State with a view to it being forwarded to a court, tribunal, government or authority mentioned in subsection (7).
- (9) The Secretary of State must forward the request for assistance to the court, tribunal, government or authority.
- (10) In a case of urgency, a request for assistance under this section may be sent to—
 - (a) the International Criminal Police Organisation, or
 - (b) any person competent to receive it under any provisions adopted under the EU Treaties,for forwarding to the court, tribunal, government or authority mentioned in subsection (7).

Crime and Courts Bill [*Lords*], *continued*

- (11) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to requests for assistance made by a judge under this section.
- (12) “Evidence” includes documents, information in any other form and material.

282E Evidence overseas: restrictions on use

- (1) This section applies to evidence obtained by means of a request for assistance under section 282D.
- (2) The evidence must not be used for any purpose other than—
 - (a) for the purposes of carrying out the functions of the interim receiver or interim administrator, or
 - (b) for the purposes of proceedings under this Chapter of this Part in respect of property described in subsection (3) or any proceedings arising out of such proceedings.
- (3) That property is—
 - (a) the property that is the subject of the interim receiving order or interim administration order, or
 - (b) other property that is recoverable property in respect of the same unlawful conduct.
- (4) Subsection (2) does not apply if the court, tribunal, government or authority to whom the request for assistance was sent consents to the use.
- (5) In Scotland, the evidence may be received in evidence without being sworn to by anyone, so far as that may be done without unfairness to any party.

282F Enforcement abroad: after recovery order

- (1) This section applies if—
 - (a) a recovery order has effect in relation to property, and
 - (b) the enforcement authority or the trustee for civil recovery believes that the property is in a country outside the United Kingdom (the receiving country).
- (2) The enforcement authority or trustee for civil recovery may send a request for assistance in relation to the property to the Secretary of State with a view to it being forwarded under this section.
- (3) The Secretary of State may forward a request for assistance from the enforcement authority to the government of the receiving country.
- (4) The Secretary of State must forward a request for assistance from the trustee for civil recovery to the government of the receiving country.
- (5) A request for assistance is a request to the government of the receiving country for assistance in connection with the management and disposal of the property and includes a request—
 - (a) to secure the detention, custody or preservation of the property;
 - (b) in the case of money, to secure that it is applied in accordance with the law of the receiving country;

Crime and Courts Bill [*Lords*], *continued*

- (c) in the case of property other than money, to secure that the property is realised and the proceeds are applied in accordance with the law of the receiving country.
- (6) A certificate purporting to be issued by or on behalf of the government of the receiving country is admissible as evidence of the facts it states if it states—
 - (a) that property has been realised in pursuance of a request under this section,
 - (b) the date of realisation, and
 - (c) the proceeds of realisation.”’.

Investigations

Mr Jeremy Browne

NC13

To move the following Clause:—

‘In Schedule [*Proceeds of crime: investigations*] (proceeds of crime: investigations)—

- (a) Part 1 makes provision about orders and warrants sought under Part 8 of the Proceeds of Crime Act 2002 in connection with civil recovery investigations,
- (b) Part 2 makes provision about obtaining evidence overseas, and
- (c) Part 3 makes consequential amendments relating to immigration officers and to the National Crime Agency.’.

Mr Jeremy Browne

NS3

To move the following Schedule:—

‘PROCEEDS OF CRIME: INVESTIGATIONS

PART 1

CIVIL RECOVERY INVESTIGATIONS

- 1 Part 8 of the Proceeds of Crime Act 2002 (investigations) is amended as follows.

Meaning of “civil recovery investigation”

- 2 In section 341 (investigations), for subsections (2) and (3) substitute—
- “(2) For the purposes of this Part a civil recovery investigation is an investigation for the purpose of identifying recoverable property or associated property and includes investigation into—
 - (a) whether property is or has been recoverable property or associated property,
 - (b) who holds or has held property,
 - (c) what property a person holds or has held, or
 - (d) the nature, extent or whereabouts of property.
 - (3) But an investigation is not a civil recovery investigation to the extent that it relates to—

Crime and Courts Bill [Lords], continued

- (a) property in respect of which proceedings for a recovery order have been started,
- (b) property to which an interim receiving order applies,
- (c) property to which an interim administration order applies, or
- (d) property detained under section 295.”

3 After that section insert—

“341A Orders and warrants sought for civil recovery investigations

Where an application under this Part for an order or warrant specifies property that is subject to a civil recovery investigation, references in this Part to the investigation for the purposes of which the order or warrant is sought include investigation into—

- (a) whether a person who appears to hold or to have held the specified property holds or has held other property,
- (b) whether the other property is or has been recoverable property or associated property, and
- (c) the nature, extent or whereabouts of the other property.”

Production orders: England and Wales and Northern Ireland

4 In section 345 (production orders), in subsection (2)(a), after “confiscation investigation” insert “, a civil recovery investigation”.

5 In section 346 (requirements for making of production order), in subsection (2), for paragraph (b) substitute—

“(b) in the case of a civil recovery investigation—

- (i) the person the application for the order specifies as being subject to the investigation holds recoverable property or associated property,
- (ii) that person has, at any time, held property that was recoverable property or associated property at the time, or
- (iii) the property the application for the order specifies as being subject to the investigation is recoverable property or associated property;”.

Search and seizure warrants: England and Wales and Northern Ireland

6 In section 352 (search and seizure warrants), in subsection (2)(a), after “confiscation investigation” insert “, a civil recovery investigation”.

7 (1) Section 353 (requirements where production order not available) is amended as follows.

(2) In subsection (2), for paragraph (b) substitute—

“(b) in the case of a civil recovery investigation—

- (i) the person specified in the application for the warrant holds recoverable property or associated property,
- (ii) that person has, at any time, held property that was recoverable property or associated property at the time, or
- (iii) the property specified in the application for the warrant is recoverable property or associated property;”.

(3) In subsection (7), for paragraph (a) substitute—

Crime and Courts Bill [*Lords*], continued

“(a) relates to the person or property specified in the application or to any of the questions listed in subsection (7ZA), and”.

(4) After that subsection insert—

“(7ZA) Those questions are—

- (a) where a person is specified in the application, any question as to—
 - (i) what property the person holds or has held,
 - (ii) whether the property is or has been recoverable property or associated property, or
 - (iii) the nature, extent or whereabouts of the property, and
- (b) where property is specified in the application, any question as to—
 - (i) whether the property is or has been recoverable property or associated property,
 - (ii) who holds it or has held it,
 - (iii) whether a person who appears to hold or to have held it holds or has held other property,
 - (iv) whether the other property is or has been recoverable property or associated property, or
 - (v) the nature, extent or whereabouts of the specified property or the other property.”

Disclosure orders: England and Wales and Northern Ireland

8 In section 357 (disclosure orders), in subsection (3)(b), at the beginning insert “a person specified in the application or”.

9 In section 358 (requirements for making of disclosure order), in subsection (2), for paragraph (b) substitute—

“(b) in the case of a civil recovery investigation—

- (i) the person specified in the application for the order holds recoverable property or associated property,
- (ii) that person has, at any time, held property that was recoverable property or associated property at the time, or
- (iii) the property specified in the application for the order is recoverable property or associated property;”.

Customer information orders: England and Wales and Northern Ireland

10 In section 363 (customer information orders), in subsection (2)—

- (a) after “confiscation investigation” insert “, a civil recovery investigation”, and
- (b) omit paragraph (b) (and the “or” before it).

11 In section 365 (requirements for making of customer information order), for subsection (3) substitute—

“(3A) In the case of a civil recovery investigation, there must be reasonable grounds for suspecting that the person specified in the application—

- (a) holds recoverable property or associated property, or
- (b) has, at any time, held property that was recoverable property or associated property at the time.”

Crime and Courts Bill [*Lords*], *continued*
Account monitoring orders: England and Wales and Northern Ireland

- 12 In section 370 (account monitoring orders), in subsection (2)—
- (a) after “confiscation investigation” insert “, a civil recovery investigation”, and
 - (b) omit paragraph (b) (and the “or” before it).
- 13 In section 371 (requirements for making of account monitoring order), for subsection (3) substitute—
- “(3A) In the case of a civil recovery investigation, there must be reasonable grounds for suspecting that the person specified in the application holds recoverable property or associated property.”

Production orders: Scotland

- 14 (1) Section 380 (production orders) is amended as follows.
- (2) In subsection (2), omit “property subject to”.
 - (3) In subsection (3)(a), after “confiscation investigation” insert “, a civil recovery investigation”.
- 15 (1) In section 381 (requirements for making of production order), in subsection (2), for paragraph (b) substitute—
- “(b) in the case of a civil recovery investigation—
- (i) the person the application for the order specifies as being subject to the investigation holds recoverable property or associated property,
 - (ii) that person has, at any time, held property that was recoverable property or associated property at the time, or
 - (iii) the property the application for the order specifies as being subject to the investigation is recoverable property or associated property;”.

Search warrants: Scotland

- 16 (1) Section 387 (search warrants) is amended as follows.
- (2) In subsection (2), omit “property subject to”.
 - (3) In subsection (3)(a), after “confiscation investigation” insert “, a civil recovery investigation”.
- 17 (1) Section 388 (requirements where production order not available) is amended as follows.
- (2) In subsection (2), for paragraph (b) substitute—
- “(b) in the case of a civil recovery investigation—
- (i) the person specified in the application for the warrant holds recoverable property or associated property,
 - (ii) that person has, at any time, held property that was recoverable property or associated property at the time, or
 - (iii) the property specified in the application for the warrant is recoverable property or associated property;”.
- (3) In subsection (7), for paragraph (a) substitute—
- “(a) relates to the person or property specified in the application or to any of the questions listed in subsection (7ZA), and”.

Crime and Courts Bill [Lords], continued

(4) After that subsection insert—

“(7ZA) Those questions are—

- (a) where a person is specified in the application, any question as to—
 - (i) what property the person holds or has held,
 - (ii) whether the property is or has been recoverable property or associated property, or
 - (iii) the nature, extent or whereabouts of the property, and
- (b) where property is specified in the application, any question as to—
 - (i) whether the property is or has been recoverable property or associated property,
 - (ii) who holds it or has held it,
 - (iii) whether a person who appears to hold or to have held it holds or has held other property,
 - (iv) whether the other property is or has been recoverable property or associated property, or
 - (v) the nature, extent or whereabouts of the specified property or the other property.”

Disclosure orders: Scotland

- 18 In section 391 (disclosure orders), in subsection (3)(b), at the beginning insert “a person specified in the application or”.
- 19 In section 392 (requirements for making of disclosure order), in subsection (2), for paragraph (b) substitute—
- “(b) in the case of a civil recovery investigation—
 - (i) the person specified in the application for the order holds recoverable property or associated property,
 - (ii) that person has, at any time, held property that was recoverable property or associated property at the time, or
 - (iii) the property specified in the application for the order is recoverable property or associated property;”.

Customer information orders: Scotland

- 20 (1) Section 397 (customer information orders) is amended as follows.
- (2) In subsection (2), omit “property subject to”.
- (3) In subsection (3)—
- (a) after “confiscation investigation” insert “, a civil recovery investigation”, and
 - (b) omit paragraph (b) (and the “or” before it).
- 21 In section 399 (requirements for making of customer information order), for subsection (3) substitute—
- “(3A) In the case of a civil recovery investigation, there must be reasonable grounds for suspecting that the person specified in the application—
- (a) holds recoverable property or associated property, or
 - (b) has, at any time, held property that was recoverable property or associated property at the time.”

Crime and Courts Bill [*Lords*], *continued*
Account monitoring orders: Scotland

- 22 (1) Section 404 (account monitoring orders) is amended as follows.
- (2) In subsection (2), omit “property subject to”.
- (3) In subsection (3)—
- (a) after “confiscation investigation” insert “, a civil recovery investigation”, and
- (b) omit paragraph (b) (and the “or” before it).
- 23 In section 405 (requirements for making of account monitoring order), for subsection (3) substitute—
- “(3A) In the case of a civil recovery investigation, there must be reasonable grounds for suspecting that the person specified in the application holds recoverable property or associated property.”

PART 2

EVIDENCE OVERSEAS

- 24 Part 8 of the Proceeds of Crime Act 2002 (investigations) is amended as follows.
- 25 In section 341(3A) (definition of detained cash investigation)—
- (a) after “investigation is” insert “an investigation for the purposes of Chapter 3 of Part 5 into—”, and
- (b) in paragraphs (a) and (b), omit “an investigation for the purposes of Chapter 3 of Part 5 into”.
- 26 In Chapter 2 (England and Wales and Northern Ireland), after section 375 and the heading “Evidence overseas” insert—

“375A Evidence overseas

- (1) This section applies if a person or property is subject to a civil recovery investigation, a detained cash investigation or an exploitation proceeds investigation.
- (2) A judge may request assistance under this section if—
- (a) an application is made by an appropriate officer or a person subject to the investigation, and
- (b) the judge thinks that there is relevant evidence in a country or territory outside the United Kingdom.
- (3) The relevant Director or a senior appropriate officer may request assistance under this section if the Director or officer thinks that there is relevant evidence in a country or territory outside the United Kingdom.
- (4) The assistance that may be requested under this section is assistance in obtaining outside the United Kingdom relevant evidence specified in the request.
- (5) Relevant evidence is—
- (a) in relation to an application or request made for the purposes of a civil recovery investigation, evidence relevant for the purpose of identifying recoverable property or associated property, including evidence as to a matter described in section 341(2)(a) to (d);

Crime and Courts Bill [*Lords*], *continued*

- (b) in relation to an application or request made for the purposes of a detained cash investigation, evidence as to a matter described in section 341(3A)(a) or (b);
 - (c) in relation to an application or request made for the purposes of an exploitation proceeds investigation, evidence as to a matter described in section 341(5)(a) to (d).
- (6) A request for assistance under this section may be sent—
- (a) to a court or tribunal which is specified in the request and which exercises jurisdiction in the place where the evidence is to be obtained,
 - (b) to the government of the country or territory concerned, or
 - (c) to an authority recognised by the government of the country or territory concerned as the appropriate authority for receiving requests for assistance of that kind.
- (7) Alternatively, a request for assistance under this section may be sent to the Secretary of State with a view to it being forwarded to a court, tribunal, government or authority mentioned in subsection (6).
- (8) The Secretary of State must forward the request for assistance to the court, tribunal, government or authority.
- (9) In a case of urgency, a request for assistance under this section may be sent to—
- (a) the International Criminal Police Organisation, or
 - (b) any person competent to receive it under any provisions adopted under the EU Treaties,
- for forwarding to the court, tribunal, government or authority mentioned in subsection (6).
- (10) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to requests for assistance made by a judge under this section.
- (11) “Evidence” includes documents, information in any other form and material.

375B Evidence overseas: restrictions on use

- (1) This section applies to evidence obtained by means of a request for assistance under section 375A.
- (2) The evidence must not be used for any purpose other than—
 - (a) for the purposes of the investigation for which it was obtained, or
 - (b) for the purposes of proceedings described in subsection (3) or any proceedings arising out of such proceedings.
- (3) Those proceedings are—
 - (a) if the request was made for the purposes of a civil recovery investigation, proceedings under Chapter 2 of Part 5 of this Act arising out of the investigation;
 - (b) if the request was made for the purposes of a detained cash investigation, proceedings under Chapter 3 of Part 5 of this Act arising out of the investigation;

Crime and Courts Bill [Lords], continued

- (c) if the request was made for the purposes of an exploitation proceeds investigation, proceedings under Part 7 of the Coroners and Justice Act 2009 arising out of the investigation.
- (4) Subsection (2) does not apply if the court, tribunal, government or authority to whom the request for assistance was sent consents to the use.”
- 27 (1) Section 378 (officers) is amended as follows.
- (2) After subsection (3A) insert—
- “(3AA) In relation to a detained cash investigation these are senior appropriate officers—
- (a) a police officer who is not below the rank of superintendent;
- (b) an accredited financial investigator who falls within a description specified in an order made for the purposes of this paragraph by the Secretary of State under section 453;
- (c) an officer of Revenue and Customs who is not below such grade as is designated by the Commissioners of Customs and Excise as equivalent to that rank.”
- (3) In subsection (6A)—
- (a) after “investigation” insert “—
- (a) ”, and
- (b) at the end insert—
- “(b) a senior member of SOCA’s staff is a senior appropriate officer.”
- 28 In Chapter 3 (Scotland), after section 408 insert—

*“Evidence overseas***408A Evidence overseas**

- (1) This section applies if a person or property is subject to a civil recovery investigation or a detained cash investigation.
- (2) A judge of the Court of Session may request assistance under this section if—
- (a) an application is made by an appropriate person or a person subject to the investigation, and
- (b) the judge thinks that there is relevant evidence in a country or territory outside the United Kingdom.
- (3) An appropriate person may request assistance under this section if the person thinks that there is relevant evidence in a country or territory outside the United Kingdom.
- (4) The assistance that may be requested under this section is assistance in obtaining outside the United Kingdom relevant evidence specified in the request.
- (5) Relevant evidence is—
- (a) in relation to an application or request made for the purposes of a civil recovery investigation, evidence relevant for the purpose of identifying recoverable property or associated property, including evidence as to a matter described in section 341(2)(a) to (d);

Crime and Courts Bill [*Lords*], *continued*

- (b) in relation to an application or request made for the purposes of a detained cash investigation, evidence as to a matter described in section 341(3A)(a) or (b).
- (6) A request for assistance under this section may be sent—
 - (a) to a court or tribunal which is specified in the request and which exercises jurisdiction in the place where the evidence is to be obtained,
 - (b) to the government of the country or territory concerned, or
 - (c) to an authority recognised by the government of the country or territory concerned as the appropriate authority for receiving requests for assistance of that kind.
- (7) Alternatively, a request for assistance under this section may be sent to the Secretary of State with a view to it being forwarded to a court, tribunal, government or authority mentioned in subsection (6).
- (8) The Secretary of State must forward the request for assistance to the court, tribunal, government or authority.
- (9) In a case of urgency, a request for assistance under this section may be sent to—
 - (a) the International Criminal Police Organisation, or
 - (b) any person competent to receive it under any provisions adopted under the EU Treaties,for forwarding to the court, tribunal, government or authority mentioned in subsection (6).
- (10) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to requests for assistance made by a judge under this section.
- (11) “Evidence” includes documents, information in any other form and material.

408B Evidence overseas: restrictions on use

- (1) This section applies to evidence obtained by means of a request for assistance under section 408A.
- (2) The evidence must not be used for any purpose other than—
 - (a) for the purposes of the investigation for which it was obtained, or
 - (b) for the purposes of proceedings described in subsection (3) or any proceedings arising out of such proceedings.
- (3) Those proceedings are—
 - (a) if the request was made for the purposes of a civil recovery investigation, proceedings under Chapter 2 of Part 5 of this Act arising out of the investigation;
 - (b) if the request was made for the purposes of a detained cash investigation, proceedings under Chapter 3 of Part 5 of this Act arising out of the investigation.
- (4) Subsection (2) does not apply if the court, tribunal, government or authority to whom the request for assistance was sent consents to the use.

Crime and Courts Bill [*Lords*], *continued*

- (5) The evidence may be received in evidence without being sworn to by anyone, so far as that may be done without unfairness to any party.”

PART 3

CONSEQUENTIAL AMENDMENTS: IMMIGRATION OFFICERS AND NATIONAL CRIME AGENCY

Immigration officers

- 29 In section 378 of the Proceeds of Crime Act 2002 (investigations: appropriate officers etc), in subsection (3AA) (inserted by this Schedule), after paragraph (c) insert—
- “(d) an immigration officer who is not below such grade as is designated by the Secretary of State as equivalent to that rank.”

National Crime Agency

- 30 In section 378 of the Proceeds of Crime Act 2002 (investigations: appropriate officers etc), in subsection (6A)(b) (inserted by this Schedule), for “senior member of SOCA’s staff” substitute “senior National Crime Agency officer”.

Deportation on national security grounds: appeals

Mr Jeremy Browne

NC14

To move the following Clause:—

- ‘(1) Section 97A of the Nationality, Immigration and Asylum Act 2002 (deportation on national security grounds: appeal rights) is amended as follows.
- (2) After subsection (1) insert—
- “(1A) This section also applies where the Secretary of State certifies, in the case of a person in respect of whom a deportation order has been made which states that it is made in accordance with section 32(5) of the UK Borders Act 2007, that the person’s removal from the United Kingdom would be in the interests of national security.”
- (3) For subsection (2)(c) substitute—
- “(c) section 2(5) of the Special Immigration Appeals Commission Act 1997 (whether appeals brought against decisions certified under section 97 may be brought from within the United Kingdom) does not apply, but see instead the following provisions of this section.”
- (4) After subsection (2) insert—
- “(2A) The person while in the United Kingdom may not bring or continue an appeal under section 2 of the Special Immigration Appeals Commission Act 1997—
- (a) against the decision to make the deportation order, or
- (b) against any refusal to revoke the deportation order,
- unless the person has made a human rights claim while in the United Kingdom.

Crime and Courts Bill [*Lords*], *continued*

- (2B) Subsection (2A) does not allow the person while in the United Kingdom to bring or continue an appeal if the Secretary of State certifies that removal of the person—
- (a) to the country or territory to which the person is proposed to be removed, and
 - (b) despite the appeals process not having been begun or not having been exhausted,
- would not breach the United Kingdom’s obligations under the Human Rights Convention.
- (2C) The grounds upon which a certificate may be given under subsection (2B) include (in particular)—
- (a) that the person would not, before the appeals process is exhausted, face a real risk of serious irreversible harm if removed to the country or territory to which the person is proposed to be removed;
 - (b) that the whole or part of any human rights claim made by the person is clearly unfounded.
- (2D) Subsection (2A) does not allow the person while in the United Kingdom to bring an appeal on a non-human-rights ground, or to continue an appeal so far as brought on non-human-rights grounds, if the Secretary of State certifies that removal of the person—
- (a) to the country or territory to which the person is proposed to be removed, and
 - (b) despite the appeals process, so far as relating to appeal on non-human-rights grounds, not having been begun or not having been exhausted,
- would not breach the United Kingdom’s obligations under the Human Rights Convention.
- (2E) In subsection (2D) “non-human-rights ground” means any ground other than the ground that removal of the person from the United Kingdom in consequence of the decision to make the deportation order would be unlawful under section 6 of the Human Rights Act 1998 as being incompatible with a person’s Convention rights.
- (2F) If a certificate in respect of a person is given under subsection (2B), the person may apply to the Special Immigration Appeals Commission to set aside the certificate.
- (2G) If a person makes an application under subsection (2F) then the Commission, in determining whether the certificate should be set aside, must apply the principles that would be applied in judicial review proceedings.
- (2H) The Commission’s determination of a review under subsection (2F) is final.
- (2J) The Commission may direct that a person who has made and not withdrawn an application under subsection (2F) is not to be removed from the United Kingdom at a time when the review has not been finally determined by the Commission.
- (2K) Sections 5 and 6 of the Special Immigration Appeals Commission Act 1997 apply in relation to reviews under subsection (2F) (and to applicants

Crime and Courts Bill [Lords], continued

for such reviews) as they apply in relation to appeals under section 2 or 2B of that Act (and to persons bringing such appeals).

- (2L) Any exercise of power to make rules under section 5 of that Act in relation to reviews under subsection (2F) is to be with a view to securing that proceedings on such reviews are handled expeditiously.”
- (5) In subsection (3) (appeal against certificate under subsection (2)(c)(iii)) for “(2)(c)(iii)” substitute “(2D)”.’.

Mr Jeremy Browne

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Clause 42, page 43, line 26, at end insert—

- ‘() An order which includes provision for the commencement of section [Investigations] or Schedule [Proceeds of crime: investigations] may not be made unless the Secretary of State has consulted the Scottish Ministers.’.

Mr Jeremy Browne

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Clause 42, page 43, line 27, after ‘Sections’, insert ‘[Civil recovery of the proceeds etc of unlawful conduct] (except subsection (6)(a))’.

Mr Jeremy Browne

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Clause 42, page 43, line 27, after ‘section’, insert ‘and Part 2 of Schedule [Proceeds of crime: civil recovery of the proceeds etc of unlawful conduct]’.

Mr Jeremy Browne

117

Clause 42, page 44, line 24, at end insert—

- ‘() The power conferred by section 52(2) of the Civil Jurisdiction and Judgments Act 1982 (power to extend to Channel Islands, Isle of Man and British overseas territories) is exercisable in relation to any amendment of that Act that is made by or under this Act.’.
-