

CRIME AND COURTS BILL [HL]

EXPLANATORY NOTES ON COMMONS AMENDMENTS

INTRODUCTION

1. These Explanatory Notes relate to the Commons amendments to the Crime and Courts Bill [HL] as brought from the House of Commons on 19th March 2013. They have been prepared by the Home Office and Ministry of Justice in order to assist the reader of the Bill and help to inform debate on the Commons Amendments. They do not form part of the Bill and have not been endorsed by Parliament.

2. The Notes, like the Commons amendments themselves, refer to Bill 115, the Bill as first printed for the Commons.

3. These notes need to be read in conjunction with the Commons amendments, the text of the Bill and Explanatory Notes accompanying the Bill. They are not, and are not meant to be, a comprehensive description of the effect of the Commons amendments.

COMMENTARY ON COMMONS AMENDMENTS

New clause “Modification of NCA functions” as inserted by Commons Amendment 1

4. **Commons Amendment 1** would enable the Secretary of State, by order (subject to the super-affirmative procedure (*subsection (5)*), to make further provision about NCA counter-terrorism functions. By virtue of *subsection (1)(a)* the power may be used to add, remove or otherwise modify such function. By virtue of *subsection (1)(b)* any order may contain other provisions in connection with, or consequential upon, the altering of NCA functions. *Subsection (2)* provides that if an order is made under *subsection (1)* conferring an NCA counter-terrorism function, an NCA officer may only carry out activities in Northern Ireland for the purpose of the discharge of the function with the prior agreement of the Chief Constable of the Police Service of Northern Ireland. This new clause was clause 2 of the Bill as introduced in the House of Lords, but was removed from the Bill at Report Stage in the House of Lords following a division on a non-government amendment. **Commons Amendments 26 and 137** make consequential amendments to clause 39 (*Orders and regulations*) and Schedule 19 (*Super-affirmative procedure*).

Commons Amendment to Clause 2: Strategic Priorities

5. **Commons Amendment 2** would replace the power conferred on the Secretary of State to set strategic priorities for the National Crime Agency with a duty to do so.

***New clause “Varying designations of authorities responsible for remanded young persons”
as inserted by Commons Amendment 3***

6. **Commons Amendment 3** would amend provisions in Chapter 3 of Part 3 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (“the 2012 Act”) relating to the designation of a local authority for a child who is remanded to youth detention accommodation.

7. Section 102(6) of the 2012 Act requires the court (where a child is remanded to youth detention accommodation) to designate a local authority as the designated authority for the child. The designation operates for various purposes, including for the purpose of regulations made under section 103(2) about the recovery of costs from the designated authority.

8. Section 102(7)(a) provides that the court must, where the child is looked after, designate the authority which looks after the child. Section 102(7)(b) provides that, where section 102(7)(a) does not apply, the court must designate either the local authority in whose area it appears to the court that the child habitually resides, or the local authority in whose area it appears to the court that the offence was committed. *Subsection (4)* of the new clause would insert new section 102(7A) and (7B) into the 2012 Act to provide that a court is to designate the local authority in whose area the child habitually resides, unless it considers it inappropriate to do so, or is unable to identify any place in England and Wales where the child habitually resides. It also provides that where it appears to the court that the offence was not committed in England and Wales, and it is not required under new section 102(7A) to designate the local authority in whose area the child habitually resides, the court may designate a local authority which it considers appropriate in the circumstances of the case.

9. *Subsection (5)* of the new clause would insert new section 102(7C) to (7J) into the 2012 Act. These provisions would give a court the power to make an order to replace a designated local authority with another local authority. A court currently has the power to change the designated authority, but such a change only has effect from the date on which the change is made. A replacement designation under the new provisions would have the effect that the newly designated local authority becomes liable, by virtue of any regulations made under section 103(2) of the 2012 Act, to pay any costs of accommodation, including during the period before the replacement (that is, when the original local authority was designated). The provisions would make further, ancillary provision. In particular, new section 102(7H) would provide that if a designated local authority has paid an amount by virtue of regulations made under section 103(2) for the costs of the remand of a child to youth detention accommodation, and a replacement designation has been made, that amount must be repaid to the original local authority.

10. *Subsections (6) and (7)* would provide that, although a replacement designation under new section 102(7C) of the 2012 Act may be made in respect of a remand ordered before the commencement of the new clause, the substitution of a newly designated local authority does not have effect in respect to any time before commencement. Subject to this, the amendments to section 102 of the 2012 Act which would be made by the new clause would only have effect in relation to remands ordered after commencement.

11. **Commons Amendment 36** would make a consequential amendment to the commencement provisions in clause 42 so that the new clause comes into force the day after Royal Assent.

Commons Amendments to Clause 18 and Schedule 13: Judicial Appointments

12. **Commons Amendments 4, 128 and 129** would temporarily place the selection process for the Lord Chief Justice and Heads of Division on the face of the Constitutional Reform Act 2005 (“the 2005 Act”) to allow the next Lord Chief Justice to be selected using a new selection process. The Bill removes much of the detail of the selection process, including details of membership of selection panels, from the face of the 2005 Act but requires such detail to be provided for in secondary legislation. The amendments would introduce new Part 4A (*Selection of Lord Chief Justice and Heads of Division: Transitory Provision*) of Schedule 13 which provides that the selection panel shall consist of five members and shall have a lay chair, and that the Lord Chancellor and the First Minister for Wales must be consulted during the process. This is a transitory measure. Following the making of regulations for the judicial appointment process, Part 4A of Schedule 13 will cease to have effect. **Commons Amendments 34, 35 and 42** would amend clause 42 so that the amendments come into force on Royal Assent.

13. **Commons Amendment 93** would expressly provide that the “tipping point” principle may apply to Supreme Court appointments, so that where two candidates for appointment as a Justice of the Supreme Court are of equal merit, a selection commission may prefer one candidate over the other for the purpose of increasing judicial diversity within the Supreme Court.

14. Part 4 of Schedule 13 transfers the responsibility for certain decisions in relation to some judicial appointments from the Lord Chancellor to the Lord Chief Justice and Senior President of Tribunals. Schedule 13 as sent to the House of Commons also transferred the power to renew or refuse to renew the term of a fixed-term judicial appointment from the Lord Chancellor to the Lord Chief Justice and Senior President of Tribunals. **Commons Amendments 96 to 126** would amend Schedule 13 to ensure that the power to renew or refuse to renew the term of a fixed-term judicial appointment remains with the Lord Chancellor, but the Lord Chancellor would only be able to refuse to renew a fixed-term appointment (a) on the ground of inability or misbehaviour or a ground specified in the terms of appointment and (b) with any agreement of the Lord Chief Justice (or other senior judge

where applicable), or the senior judge's nominee, that may be required by the terms and conditions of the appointment.

15. **Commons Amendment 127** would make a minor technical amendment to the Coroners and Justice Act 2009 to ensure that a reference to Schedule 14 to the 2005 Act in the Coroners and Justice Act 2009 continues to be correct once the 2005 Act is amended by this Bill. It would also correct a cross-reference inserted into that Schedule by the Coroners and Justice Act 2009.

16. Part 3 of Schedule 13 moves the detail relating to the composition of the Judicial Appointments Commission and selection of commissioners from the 2005 Act into secondary legislation and provides the regulation making powers to make that secondary legislation. One of the matters to be moved from the 2005 Act into regulations is the requirement for the selection process for lay commissioners of the Commission to be exercised with a view to ensuring there is a commissioner with knowledge of Wales on the Commission. **Commons Amendments 94 and 95** would amend this requirement by specifying that future regulations made under the 2005 Act must, rather than may, be exercised with a view to ensuring there is a commissioner with knowledge of Wales on the Commission.

New clause "Enforcement by Taking Control of Goods" as inserted by Commons Amendment 5

17. **Commons Amendment 5** would amend Schedule 12 to the Tribunals, Courts and Enforcement Act 2007 (which makes provision for a codified procedure of "taking control of goods" to be followed by enforcement agents when seizing an individual's goods in settlement of a debt). The new clause would remove the power to prescribe circumstances in which an enforcement agent may use force against a person (thus completely removing the ability of an enforcement agent to use force against a person); provide enforcement agents with the power to use reasonable force (which does not include force against the person) to enter business premises when executing a High Court or county court debt; provide enforcement agents with the power to use reasonable force (which does not include force against the person) to re-enter any premises to inspect or remove goods subject to a controlled goods agreement in circumstances where the payment provisions of that agreement have been broken or the debtor has been given prior notice by the enforcement agent of the intention to re-enter; and amend the current definition of "abandonment" of goods so that goods unsold at auction, for example, are not deemed to have been abandoned so as to require further seizure. **Commons Amendment 31** would make a consequential amendment to provide for the new clause to be commenced by the Lord Chancellor.

Commons Amendment to Clause 26: Enforcement Services

18. **Commons Amendment 6** would omit clause 26 from the Bill. This clause, which was added to the Bill at Lords Third Reading following a division on a non-government amendment, sought to establish an independent complaints process for complaints made against bailiffs.

New Clause “Supreme Court chief executive, officers and staff” as inserted by Commons Amendment 7

19. **Commons Amendment 7** would amend sections 48 and 49 of the Constitutional Reform Act 2005 so that the President of the UK Supreme Court, rather than the Lord Chancellor, is responsible for the appointment of the Chief Executive and that it is no longer necessary for the Chief Executive of the UK Supreme Court to agree the staffing structure of the Court with the Lord Chancellor. Subsection (4) of the new clause would insert a new subsection (2A) into section 49 of the Constitutional Reform Act 2005 which reflects the current position by providing that service as the Chief Executive, officer or staff member of the Court constitutes service as a Home Civil Servant. **Commons Amendment 32** would make a consequential amendment to the commencement provisions in clause 42 (*Short title, commencement and extent*).

New clause “Making and use of recordings of Supreme Court proceedings” as inserted by Commons Amendment 8

20. Upon the creation of the Supreme Court, section 47 of the Constitutional Reform Act 2005 effectively lifted the prohibition against photography and filming in court contained within section 41 of the Criminal Justice Act 1925. Section 9 of the Contempt of Court Act 1981, which prohibits sound recording in court and the broadcasting of any such recording, was not amended. **Commons Amendment 8** would allow the Supreme Court to disapply section 9 of the Contempt of Court Act 1981. **Common Amendments 33 and 37** would make consequential amendments to the commencement provisions in clause 42 (*Short title, commencement and extent*) so that the new clause comes into force two months after Royal Assent.

Commons Amendments to Clause 28: Enabling the making, and use, of films and other recordings of proceedings

21. Clause 28(3) sets out the circumstances where a court may direct that section 9 of the Contempt of Court Act 1981 and section 41 of the Criminal Justice Act 1925 (which prevent filming and broadcasting in court) should continue to have effect where filming or broadcasting would otherwise be permitted by an order made under clause 28. Clause 28(3) contains two tests; **Commons Amendment 9** would modify these tests so as to give the court a wider discretion to stop filming or broadcasting of court proceedings. The requirement for

the court to consider “the fairness of any proceedings” would be replaced with a requirement to consider the interests of justice, whilst the requirement for the court to consider whether “any person involved in the proceedings is not unduly prejudiced” would be replaced with a requirement for the court to consider whether any person will be unduly prejudiced, irrespective of whether or not they are a party to the proceedings. **Commons Amendment 10** amends clause 28 to clarify that the Supreme Court is exempt from the effects of clause 28, that is those provisions allowing court broadcasting below the Supreme Court. As mentioned above, there is separate provision about allowing broadcasting of Supreme Court proceedings.

New clause “Awards of exemplary damages” as inserted by Commons Amendment 11

22. **Commons Amendment 11** would establish when exemplary damages may be awarded against a relevant publisher (defined in Commons Amendment 18) upon a finding of liability under a relevant claim (as defined in Commons Amendment 19). By *subsection (2)*, a defendant who was a member of an approved regulator at the material time (defined in Commons Amendment 19) would be entirely excluded from liability to exemplary damages, whether under the common law or this statutory scheme. However, *subsection (3)* allows the court to disregard *subsection (2)* if it considers that a decision by an approved regulator either to impose a penalty on the defendant or not to do so was manifestly irrational, and that otherwise it would have made an award of exemplary damages against the defendant. For unregulated defendant publishers, the new clause prevents exemplary damages being awarded in respect of relevant claims under the common law – they may only be awarded under the statutory scheme. Exemplary damages must be specifically claimed by the claimant. The test of liability is in *subsection (6)* – exemplary damages require conduct:

- (a) showing a deliberate or reckless disregard of an outrageous nature for the claimant’s rights;
- (b) of an order meriting punishment (that is, some response beyond mere compensation of the victim); and
- (c) in relation to which other remedies are insufficient to punish (for example, the size of the compensation is not sufficient punishment in itself on the facts of the case).

23. The court will look at all the circumstances. The decision on whether to award exemplary damages, and (if so) the decision as to the size of the award, may only be made by a judge - jury involvement is excluded.

New clause “Relevant considerations” as inserted by Commons Amendment 12

24. **Commons Amendment 12** would give the court detailed guidance about particular factors to take into account in deciding whether to award exemplary damages. The court should not usually award exemplary damages if a defendant has already been punished in relation to the same conduct through a criminal conviction. The court should also take account of whether the defendant could have joined a regulatory scheme (and if they did not,

the reasons for that decision). In addition, the court should consider whether, irrespective of regulatory scheme membership, the defendant had satisfactory internal compliance procedures in place and adhered to them. The court may have regard to the need for deterrence – both of the defendant and others. The provisions of *subsection (6)* would make clear, notwithstanding these specific directions, that the court has a general discretion to look at all relevant circumstances.

New clause “Amount of exemplary damages” as inserted by Commons Amendment 13

25. **Commons Amendment 13** would provide that when determining the amount of exemplary damages, the court must have regard to the need for the award to be no more than is necessary to punish adequately the defendant, and must ensure that the award is proportionate to the seriousness of the conduct. The court is also required to take account of the nature and extent of loss or harm caused (or intended to be caused) by the defendant’s conduct, and the benefit the defendant derived, or hoped to derive, from that conduct. This is a reflection of the common law test. As with Commons Amendment 12, *subsection (5)* would make clear that the court has a general discretion to look at all matters relevant to its decision on determining the amount of exemplary damages.

New clause “Multiple claimants” as inserted by Commons Amendment 14

26. **Commons Amendment 14** would apply to claims involving more than one claimant. In such cases it prevents any later claims for exemplary damages where an earlier award of such damages has been made. Additionally, the new clause ensures that the global amount awarded by way of exemplary damages where two or more claimants are concerned is not excessive and with this purpose in mind, prior out of court settlements made by the defendant with other claimants can be taken into account.

New clause “Multiple defendants” as inserted by Commons Amendment 15

27. **Commons Amendment 15** would apply to claims involving more than one defendant. In such cases it indicates that in relation to exemplary damages awarded under Commons Amendment 11 liability will always be “several” so that the court can look at each defendant individually and punish that defendant according to the actual extent of their wrongdoing. Notwithstanding *subsection (1)*, *subsection (2)* preserves the position in relation to partnerships. *Subsection (3)* prevents defendants from seeking contributions from other defendants in relation to the exemplary damages paid where their liability is several as a result of this provision.

New clause “Awards of aggravated damages” as inserted by Commons Amendment 16

28. **Commons Amendment 16** would make clear that “aggravated damages” are distinct from exemplary damages. Aggravated damages relate to mental distress caused by the defendant’s wrongdoing which goes over and above the level of mental distress that the basic

award of compensation addresses. However, they are essentially still compensatory not punitive, unlike exemplary damages. The new clause puts this question beyond doubt in relation to the type of cases to which Commons Amendment 11 applies.

New clause “Awards of costs” as inserted by Commons Amendment 17

29. **Commons Amendment 17** would relate to cases where the relevant publisher is a defendant to a relevant claim. In such cases, when making a decision about whether and to what extent the defendant should pay the claimant’s costs of the case, the usual costs rules will not apply and the court will be required either to award, or not to award, costs against the defendant in accordance with *subsections (2) and (3)*. Subsection (2) applies where at the time the claim was commenced, either the defendant was a member of an approved regulator or, although the defendant was not a member, the defendant was unable to be a member for reasons beyond the defendant’s control, or it was unreasonable in the circumstances for the defendant to have been a member. In those circumstances the defendant is protected against having to pay the claimant’s costs – the court must not award costs against the defendant regardless of the outcome of the case – unless the court is satisfied that one of two exceptions applies. The exceptions are that the issues raised by the claim could have been resolved by using an arbitration scheme provided by the approved regulator, or that in all the circumstances of the case it is just and equitable to award costs against the defendant. Subsection (3) would apply where at the time the claim was commenced the defendant was not a member of an approved regulator but could have been and it was reasonable for the defendant to have been a member. In those circumstances, the position is the converse of that under subsection (2) and the court must award costs against the defendant, regardless of the outcome of the case, unless the court is satisfied that one of two exceptions applies. The exceptions are that the issues raised by the claim could not have been resolved by using an arbitration scheme provided by the approved regulator, or that in all the circumstances of the case it is just and equitable to make a different order (or no order) as to costs.

30. *Subsection (4)* would make provision for defining when, for the purposes of subsections (2) and (3), a claim could have been resolved by using an arbitration scheme of an approved regulator. *Subsection (5)* concerns costs protection other than that for defendants under subsection (2), and would require the Secretary of State to take steps to put in place arrangements for protecting the position of parties to relevant claims who are represented under a conditional fee agreement (under section 58 of the Courts and Legal Services Act 1990). *Subsection (6)* would provide a saving for the breadth of the power to make rules of court, so that this clause is not to be read as limiting any power to make rules of court; and *subsection (7)* would make transitional provision, to the effect that the clause’s provisions do not apply until such time as there is a body which is first recognised as an approved regulator.

***New clause “Meaning of “relevant publisher”” as inserted by Commons Amendment 18
and new Schedule “Exclusions from Definition of Relevant Publisher” as inserted by
Commons Amendment 131***

31. **Commons Amendment 18** would set out to whom Commons Amendments 11 to 17 are to apply. *Subsection (1)* would provide that a relevant publisher is a person publishing news-related material (defined by Commons Amendment 19) as part of their business, whether or not that business is carried on with a view to making a profit. The material must be written by different authors and be subject to some degree of editorial control. Editorial control is defined in *subsection (2)*, which provides that editorial control is exercised if a person (whether the publisher, or another person, such as an employee) has editorial or equivalent responsibility for the content of the material, how that material is to be presented, and whether to publish it. *Subsections (3) and (4)* would provide that, in relation to a website, a publisher is not to be considered as exercising editorial responsibility if they did not post the relevant material to the website themselves, or if they exercise moderation functions over such material. *Subsections (5) and (6)* would provide that, notwithstanding a publisher may fall within the provisions of subsection (1), they will not be regarded as a relevant publisher if either they are specified by name in the Schedule titled “Exclusions from Definition of Relevant Publisher” (inserted by Commons Amendment 131), or their publication of news-related material falls within the category or case of a person set out in that Schedule.

32. **Commons Amendment 131** would provide for certain persons, and certain activities to be excluded from the definition of “relevant publisher” set out in new clause “Meaning of “relevant publisher””. As *subsections (5) and (6)* of new clause “Meaning of “relevant publisher”” (Commons Amendment 18) make clear, the exclusions operate to either exclude a named person, or to exclude a person insofar as they carry out activity set out in the Schedule. *Paragraphs 1 and 2* exclude the BBC and Sianel Pedwar Cymru (the broadcaster S4C). The effect of these paragraphs is that all activities carried on by these bodies will be excluded from the definition of relevant publisher, and they will fall outside the provisions of these clauses entirely. *Paragraph 3* excludes the holders of a licence under the Broadcasting Acts 1990 and 1996, insofar as they publish news-related material in connection with their broadcasting activities as regulated by their licence. *Paragraph 4* excludes the publishers of special interest titles, which are connected with pastimes, hobbies, trade, business, industry or a profession in relation to their publication of news-related material which is incidental to, and relevant to, the subject matter of that title. *Paragraph 5* excludes scientific and academic publications, where news-related material is incidental to, and relevant to, the scientific and academic content. *Paragraph 7* is a similar exclusion, but excludes persons publishing newsletters or circulars, rather than titles, about their own business, where the news-related material is relevant to that business.

33. *Paragraph 6* excludes publications made by public bodies and charities where they publish news-related material in connection with the carrying out of their functions. Public body is defined as a person or body whose functions are public functions. *Paragraph 8*

excludes the publishers of books. Book does not include a title published on a periodic basis with substantially different content.

New clause “Other interpretative provisions” as inserted by Commons Amendment 19

34. **Commons Amendment 19** would provide certain key interpretative provisions for the operation of Commons Amendments 11 to 18 and 131. “Approved regulator” and the concept of recognition as a regulator are central to identifying whether the statutory exemplary damages regime applies to a particular publisher. The definition “relevant claim” lists six causes of action which are potentially relevant to the situation where a person experiences wrongful behaviour by a publisher and are therefore covered by these clauses. That definition is qualified by *subsection (5)*, which explains that claims under section 13 of the Data Protection Act 1998 are not included, and that “harassment” means a claim under the Protection from Harassment Act 1997. *Subsection (6)* defines “material time” to refer to the time of the events which gave rise to the claim. This is relevant in particular to the incidence of the power to award exemplary damages (subsections (1) and (2) of the new clause inserted by Commons Amendment 11), relevance of membership of an approved regulator to the decision whether to award exemplary damages (subsection (3)(a) of the new clause inserted by Commons Amendment 12), and the availability of the provision on costs at Commons Amendment 17. In other circumstances a later point in time is appropriate (for example, in relation to the point at which membership of an approved regulator is relevant to awards of costs). “News related material” is defined in *subsection (7)* to capture news, information and opinion about current affairs, and gossip about celebrities and those in the news. *Subsection (8)* explains the relationship between publication of news-related material and a relevant claim – this relationship is made clear in order to avoid the application of the statutory scheme to behaviour of relevant publishers which is unrelated to their news publishing activities (for example, a harassment claim relating to the relevant publisher’s private rather than professional activities). *Subsection (9)* makes clear that publications are caught regardless of the medium on which they are made. *Subsection (10)* clarifies the broad scope of “conduct” which can relate both to omissions, and also to activity following a point after which the claim itself arose (in particular, in defamation cases, conduct of the defendant after the defamatory publication itself can be relevant to the court’s decisions on damages).

35. **Commons Amendment 38** provides that the provisions on exemplary damages come into force one year after the date on which a body is established by Royal Charter to carry on activities relating to the recognition of independent regulators of relevant publishers. **Commons Amendment 46** makes a consequential amendment to clause 42 (*Short title, commencement and extent*) so as to limit the extent of the new clauses inserted by Commons Amendments 11 to 19 to England and Wales.

New clause “Restraint orders and legal aid” as inserted by Commons Amendment 20

36. **Commons Amendment 20** would amend section 41 of the Proceeds of Crime Act 2002 (“POCA”) so that a restraint order must be made subject to an exception enabling

relevant legal aid payments. A relevant legal aid payment is a payment which a person subject to the restraint order is obliged to make under regulations made under section 23 or 24 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 in respect of legal aid provided in connection with the offences underlying the restraint order. Currently section 41 of POCA prohibits the use of restrained assets to pay for legal expenses related to the criminal charge upon which the restraint order is predicated (which includes making a contribution towards the cost of criminal legal aid). This new clause would also insert new subsection (5A) into section 41 of POCA under which the Secretary of State may make regulations prescribing the circumstances in which the exception for relevant legal aid payments will operate, including restrictions on those circumstances and the amount of any payments, and prescribing other conditions to which the exception must be subject.

New clause “Restraint orders and legal aid: supplementary” as inserted by Commons Amendment 21

37. **Commons Amendment 21** would allow the Secretary of State to make regulations making provision about the making of relevant legal aid payments from assets that are subject to a restraint order under POCA, and in connection with cases in which such payments are or may be made. *Subsection (2)* sets out a non-exhaustive list of the types of provision that the Secretary of State might make in regulations. The types of provisions that might be made include provision about how much property may be restrained, including provision framed by reference to the amount or estimated amount of relevant legal aid payments. They also include provision to allow a restraint order to remain in force until a relevant legal aid payment is made when the order would otherwise be discharged. Provision may also be made about powers of investigation, entry, search and seizure and about information sharing in connection with the making of relevant legal aid payments out of restrained assets. Provision may also be made about the order in which payments should be made in a case where there is or has been a restraint order, for example dealing with the relative priority between compensation orders under section 130 of the Powers of Criminal Courts (Sentencing) Act 2000, confiscation orders and relevant legal aid payments. Provisions may also be made about the payment of compensation by the Lord Chancellor. *Subsection (3)* provides that regulations made under this clause may amend, repeal, revoke or modify existing primary legislation. Regulations made under this clause would be subject to the affirmative Parliamentary procedure (see **Commons Amendment 27**).

New clause “Civil recovery of the proceeds etc of unlawful conduct” as inserted by Commons Amendment 22 and new Schedule “Civil recovery of the proceeds etc of unlawful conduct” as inserted by Commons Amendment 134

38. **Commons Amendment 22** would insert new section 282A into Chapter 2 of Part 5 of POCA. **Commons Amendments 40 and 41** would provide that the new clause will come into force on Royal Assent. New section 282A would enable the courts in England and Wales and Scotland to make an order under Chapter 2 of Part 5 of POCA against property situated outside the United Kingdom where there is or has been a connection between the case and the

relevant part of the United Kingdom. A non-exhaustive list of connecting factors is set out in a new Schedule 7A to POCA. These include but are not limited to:

- The unlawful conduct took place in the relevant part of the UK;
- Connected property is or has been in the relevant part of the UK;
- The criminal, the victim or a person who holds, or has held, the property is, or has been, in the relevant part of the UK or is a British citizen.

39. The connecting factors include factors relating to businesses as well as individuals, and property held on trust or an interest in property held on trust.

40. The amendments made by the new clause would have retrospective effect (see subsection (7)).

41. Subsection (6) of **new clause “Civil recovery of the proceeds etc of unlawful conduct”** introduces **new Schedule “Proceeds of crime: civil recovery of the proceeds etc of unlawful conduct”** which is inserted by **Commons Amendment 134**.

42. Part 1 of new Schedule “*Proceeds of crime: civil recovery of the proceeds etc of unlawful conduct*” would amend section 18 of the Civil Jurisdiction and Judgments Act 1982, which provides for the enforcement of judgments made in one part of the United Kingdom in another part of the United Kingdom. It would provide that the arrangements under that Act for the recognition of judgments apply in relation to interim orders made in connection with civil recovery proceedings. **Commons Amendment 50** would provide that the power under s.52(2) of the Civil Jurisdiction and Judgments Act 1982 to extend provisions of that Act to the Channel Islands, the Isle of Man and British Overseas Territories is exercisable in relation to the amendments of that Act made by the Bill.

43. Part 2 of new Schedule “*Proceeds of crime: civil recovery of the proceeds etc of unlawful conduct*” would amend Chapter 2 of Part 5 of POCA by inserting new sections 282B to 282F. The new provisions would facilitate the enforcement outside the United Kingdom of orders made under Chapter 2 of Part 5 of POCA and the transmission of requests for evidence held outside the United Kingdom. The provisions are modelled on existing mutual legal assistance provisions in Chapter 2 of Part 1 of the Crime (International Co-operation) Act 2003 and section 74 of POCA. Commons Committee Amendments 115 and 116 would provide that these provisions come into force on Royal Assent. These provisions would have retrospective effect (see subsection (7) of new clause *Civil recovery of the proceeds etc of unlawful conduct*).

44. New section 282B of POCA would make provision for an enforcement authority in England and Wales or Scotland to ask the Secretary of State to transmit a request to freeze property situated abroad to the government of the country concerned before an order under Chapter 2 of Part of POCA is made.

45. New section 282C of POCA would make provision for a receiver to transmit a request abroad to freeze property before a civil recovery order is made (or to ask the Secretary of State to do so). Assistance can only be requested if a property freezing order has effect in relation to the property and the receiver believes that the property is in a country outside the United Kingdom. Similar provision is made in relation to an interim receiving order and, in Scotland, an interim administration order.

46. New section 282D of POCA facilitates the transmission abroad of a request by, in England and Wales, an interim receiver or, in Scotland, an interim administrator where it is thought there may be relevant evidence held outside the United Kingdom. The interim receiver or interim administrator can make a direct request or make an application to the court. The request for evidence is then sent directly to a court or tribunal in the country where the evidence is to be obtained, to the government of that country, or to an authority recognised by the government of that country as the appropriate authority to receive such requests. Alternatively a request for evidence may be sent to the Secretary of State who must forward it to a court, tribunal, government or authority. If the matter is urgent, it may be sent to the country via Interpol or Europol.

47. New section 282E of POCA would provide that evidence obtained by means of a request for assistance under section 282D cannot be used for any purpose other than for carrying out the functions of the interim receiver or interim administrator, or for the purposes of certain proceedings. However, the court, tribunal, government or authority that received the request and provided the evidence, can consent to the use of the evidence for other purposes.

48. New section 282F of POCA would make provision about how a civil recovery order made in England and Wales or Scotland may be enforced abroad by an enforcement authority or the trustee for civil recovery. If a civil recovery order has effect in relation to the property and the enforcement authority or trustee for civil recovery believes that the property is in a country outside the United Kingdom, a request for assistance may be sent to the Secretary of State with a view to this being forwarded to the other country. The request for assistance is a request to the other country for assistance in connection with the management and disposal of the property.

New clause “Investigation” as inserted by Commons Amendment 23 and new Schedule “Proceeds of crime: Investigation” as inserted by Commons Amendment 135

49. **Commons Amendments 23 and 135** would make provision about orders and warrants in connection with civil recovery investigations under Part 8 (investigations) of POCA. The new Schedule would also make provision for obtaining evidence overseas and consequential amendments relating to immigration officers and the National Crime Agency.

50. Part 1 of new Schedule “*Proceeds of crime: Investigations*” would amend Part 8 of POCA. The main changes are to the definition of a civil recovery investigation to clarify that

the focus of an investigation can be a person or property and also to clarify that there can be an investigation into property that has not yet been clearly identified.

51. Part 2 of new Schedule “*Proceeds of crime: Investigations*” would insert new sections 375A, 375B, 408A and 408B into POCA. These provisions are modelled on sections 7 to 9 of the Crime (International Co-operation) Act 2003.

52. New section 375A of POCA would make provision for evidence to be obtained from overseas if a person or property is subject to a civil recovery investigation, a detained cash investigation or an exploitation proceeds investigation. It would enable a judge to make a request for assistance upon application by an appropriate officer or a person subject to the investigation, providing that the judge thinks there is relevant evidence outside the jurisdiction of the United Kingdom. Alternatively a senior appropriate officer or relevant Director may make a direct request for assistance if it is thought that there is relevant evidence outside the United Kingdom. The meanings of “appropriate officer”, “senior appropriate officer” and “relevant Director” are found in sections 352(5A) and 378 of POCA.

53. New section 375A(10) of POCA would provide a power to make rules of court as to the practice and procedure to be followed in connection with proceedings relating to requests for assistance made by a judge.

54. New section 375B of POCA would provide that evidence obtained by means of a request for assistance under new section 375A cannot be used for any other purpose other than for the purpose of the investigation for which it was obtained or for the purposes of certain proceedings. However, the country acting on the original request and providing the evidence can consent to the use of evidence for other purposes.

55. New sections 408A and 408B of POCA would provide the equivalent provisions to sections 375A and 375B of POCA for Scotland.

56. Part 3 of new Schedule “*Proceeds of crime: Investigations*” makes consequential amendments to provisions inserted by Part 2 of that Schedule. They relate to immigration officers (consequential on clause 36) and to the National Crime Agency (consequential on Part 1 of the Bill).

57. **Commons Amendment 39** would require the Secretary of State to consult the Scottish Ministers before commencing of new clause “*Investigations*” or new Schedule “*Proceeds of crime: Investigations*”.

***New clause “Extradition” as inserted by Commons Amendment 24 and new Schedule
“Extradition” as inserted by Commons Amendment 136***

58. **Commons Amendments 24 and 136** would amend the Extradition Act 2003 (“the 2003 Act”) to provide for a new forum bar to extradition. Forum concerns the place where a person ought to be prosecuted for an offence he or she is alleged to have committed.

59. *Paragraphs 1, 2 and 3* of new Schedule “Extradition” would amend Part 1 of the 2003 Act, which deals with extradition to European Union Member States, while *paragraphs 4, 5 and 6* similarly would amend Part 2 of the 2003 Act, which deals with extradition to non-European Union Member States with which the UK has extradition relations.

60. The amendments to the 2003 Act would require the judge at an extradition hearing to consider the issue of forum when deciding whether an individual should be extradited to face prosecution. Extradition can be barred by reason of forum if the judge decides that: firstly, a substantial measure of the relevant activity was performed in the UK; and secondly, having regard to a list of specified matters, it would not be in the interests of justice for the extradition to take place. The specified matters relating to the interests of justice are: (i) where most of the harm or loss occurred; (ii) the interests of any victims; (iii) any belief of a UK prosecutor that the UK is not the most appropriate place to prosecute the person; (iv) whether evidence needed to prosecute the person is or could be made available in the UK; (v) any delay that may result in proceeding in one country rather than another; (vi) the desirability and practicality of all prosecutions relating to the offence taking place in one place; and (vii) the person’s connections with the UK.

61. Extradition cannot be barred on forum grounds if a designated prosecutor issues a certificate that he or she has: firstly, considered the offences for which the person could be prosecuted in the UK; secondly, decided that there are one or more such offences which correspond to the extradition offence; and, thirdly, decided that either the person should not be prosecuted in the UK for a corresponding offence because the prosecutor believes that there is insufficient admissible evidence or it would not be in the public interest, or believes that the person should not be prosecuted in the UK because of concerns about disclosure of sensitive material.

62. A designated prosecutor may apply for an adjournment in the proceedings in order to consider whether to give a certificate. The certificate can be challenged, but only as part of an appeal to the High Court under the 2003 Act. The High Court must apply the procedures and principles of judicial review when reviewing a certificate. If the High Court quashes a certificate, it must then consider the issue of forum.

63. *Paragraphs 7, 8 and 9* contain transitional provisions, savings and repeals consequent to the amendments made by paragraphs 1 to 6.

64. Part 2 of new Schedule “*Extradition*” would amend the 2003 Act to provide that in Part 2 cases, that is those involving extradition to non-European Union Member States with which the UK has extradition relations, human rights issues, including those raised after the end of the normal statutory process, must not be considered by the Secretary of State, but may be raised with the courts right up until the time of surrender.

65. At present, human rights matters in Part 2 cases are considered by the judge at an extradition hearing and any subsequent appeal hearing(s). This situation will not be affected by these provisions. However, once the appeal process is complete, but before the person’s surrender has taken place, the person may raise human rights issues with the Secretary of State. *Paragraphs 10 to 13* of the new Schedule amend the process by making clear that the Secretary of State is not to consider human rights issues raised after the end of the statutory appeal process (or indeed at any time during the Part 2 process). Instead, in cases where the person wishes to raise late human rights issues he or she will be able to give notice of appeal out of time. The High Court will consider the appeal if it is satisfied that: (i) the appeal is necessary to avoid real injustice; and (ii) the circumstances are exceptional and make it appropriate to consider the appeal.

66. *Paragraph 14* contains transitional provisions and savings consequent to the amendments made by paragraphs 10 to 13.

67. Part 3 of new Schedule “*Extradition*” would amend the 2003 Act so that it properly takes account of appeals of devolution issues to the UK Supreme Court from the High Court of Justiciary. The High Court of Justiciary is the final court of appeal in relation to Scottish extradition proceedings except in relation to devolution issues. In the case of *BH(AP) & Another v the Lord Advocate & Another (Scotland)* [2012] UKSC 24, the UK Supreme Court raised concerns about the operation of certain aspects of the 2003 Act when an appeal of a devolution issue to the UK Supreme Court is made under the Scotland Act 1998. Part 3 of the new Schedule addresses these concerns and amends the 2003 Act. The amendments principally provide that where the authority or territory seeking a person’s extradition intends to appeal to the UK Supreme Court against the determination of a devolution issue, the court must remand the person whose extradition is sought in custody or on bail. That person must remain either in custody or on bail until the extradition proceedings are discharged or the person is extradited. The amendments clarify the time limit for extraditing a person where a party to the proceedings seeks to appeal to the UK Supreme Court against the determination on a devolution issue raised in Scottish extradition proceedings. The amendments also clarify that the provisions in the 2003 Act do not override the right of appeal to the UK Supreme Court against the determination of a devolution issue provided for in the Scotland Act 1998.

New clause “Deportation on national security grounds: appeals” as inserted by Commons Amendment 25

68. **Commons Amendment 25** would further limit the circumstances in which national security related deportations attract in-country rights of appeal on human rights grounds. The

provision would remove an appellant's in-country right of appeal where the Secretary of State certifies that removal of an appellant prior to an appeal against the making of a deportation order being exhausted would not breach the UK's obligations under the European Convention on Human Rights. The grounds on which the Secretary of State may reach this conclusion include one or both of the following: first, that all or part of the appellant's human rights claim is clearly unfounded; and, second, that removal from the UK pending the appeal being exhausted would not cause serious, irreversible harm. **Commons Amendment 49** would make a consequential amendment to clause 42(14) to enable the provisions in new clause "Deportation on national security grounds: appeals" to be extended to any of the Channel Islands and Isle of Man by Order in Council.

New Schedule "The NCA: Northern Ireland" as inserted by Commons Amendment 138

69. **Commons Amendments 47 and 138** would provide that specified "relevant NCA provisions" in Part 1 of the Bill do not extend to Northern Ireland, except by order and with the consent of the Northern Ireland Assembly (in so far as they make transferred provision). This amendment is required so that the Bill does not contain provisions, in the absence of a legislative consent motion, on transferred matters within the legislative competence of the Northern Ireland Assembly. However, to provide for maximum flexibility to give effect to any agreement from Northern Ireland in respect of the specified "relevant NCA provisions" extending to Northern Ireland (should such agreement be forthcoming), the new Schedule includes the following order-making powers: *paragraph 1(2)* enables the Secretary of State to provide that any other provision of Part 1 of the Bill (that is, a provision which is not a specified 'relevant NCA provision') is not to extend to Northern Ireland; *paragraph 2* enables the Secretary of State to reverse the effect of an order under paragraph 1 or to provide that a relevant NCA provision shall extend to Northern Ireland; *paragraph 3* enables the Secretary of State to make such provision as the Secretary of State considers appropriate, in consequence of, or in connection with a provision in the Bill extending to Northern Ireland by virtue of an order under paragraph 2; *paragraph 4* enables the Secretary of State to make such provision as the Secretary of State considers appropriate, in consequence of, or in connection with, a provision in the Bill not extending to Northern Ireland by virtue of paragraph 1(1) or an order under paragraph 1(2); and *paragraph 5* enables the Secretary of State to modify the ways in which (a) the NCA's functions are exercised in Northern Ireland; or (b) the exercise of NCA functions in Northern Ireland is planned or supervised. *Paragraph 6* provides that any order made under the new Schedule which makes transferred provision may only be made with consent of the Northern Ireland Assembly. *Paragraph 7* of the new Schedule enables an order under paragraph 2, 3, 4 or 5 to include provision: (a) conferring, removing or otherwise modifying a function (which includes an NCA function and a function of the Secretary of State), or (b) amending, repealing, revoking or otherwise modifying any enactment. This means that any order made under paragraphs 2 to 5 of the new Schedule may, in particular, make textual amendments to Part 1 of the Bill to modify its application to Northern Ireland, or modify one or more of the enactments amended in Parts 2 and 3 of Schedule 8 to the Bill. **Commons Amendments 28, 29 and 44** make consequential amendments to clause 39 (*Order and regulations*) (the effect of these amendments is that any order made under paragraph 1, 2,

3 or 4 of the new Schedule is subject to the negative procedure, whilst any order made under paragraph 5 is subject to the affirmative procedure) and clause 42 (*Short title, commencement and extent*).

New Schedule “Proceeds of Crime Provisions: Northern Ireland” as inserted by Commons Amendment 139

70. **Commons Amendments 139** would modify the extent of the provisions in new clauses “*Civil recovery of the proceeds etc of unlawful conduct*” and “*Investigations*” and new Schedules “*Proceeds of crime: civil recovery of the proceeds etc of unlawful conduct*” and “*Proceeds of crime: Investigations*” so that certain provisions, referred to as “relevant civil recovery provisions” and “relevant investigation provisions”, do not extend to Northern Ireland. Schedule *Proceeds of crime provisions: Northern Ireland* would come into force on Royal Assent (see **Commons Amendment 45**).

71. This approach has been adopted because the Northern Ireland Assembly has not approved a legislative consent motion in relation to matters covered by those provisions and falling within their legislative competence. The new Schedule would confer on the Secretary of State power by order to make provision in consequence of, or in connection with, the provisions not extending to Northern Ireland. It would also confer power on the Secretary of State by order to extend the “relevant civil recovery provisions” and the “relevant investigation provisions” to Northern Ireland. But in respect of matters falling within the legislative competence of the Northern Ireland Assembly, the Secretary of State must secure the consent of the Northern Ireland Assembly before doing so. The order-making powers would be subject to the negative procedure (see **Commons Amendment 30**).

Commons Amendments to Clause 42: Short title, commencement and extent

72. **Commons Amendment 43** would amend the commencement provisions so that clause 30 of the Bill (“Use of force in self-defence at place of residence”) would come into force on Royal Assent.

73. **Commons Committee Amendment 51** would remove the ‘privilege amendment’.

Commons Amendments to Schedule 8: Abolition of SOCA and NPIA

74. **Commons Amendment 52** would amend the provisions in paragraph 6 of Schedule 8 which makes provision for the continuity of things done by the National Crime Agency (“NCA”) precursor agencies, namely the Serious Organised Crime Agency (“SOCA”), the National Policing Improvement Agency or other third party organisations whose functions are transferring into the NCA. Paragraph 6(12) includes an interpretation provision, one effect of which is that the saving for things done by the staff of a precursor organisation only operates where the relevant staff are transferred to the NCA under a staff transfer scheme made under paragraph 1 of Schedule 8. This amendment would widen the scope of this provision so that

the saving applies to all precursor staff who become NCA Officers. **Commons Amendment 53** would make further consequential changes to the Police Pension Act 1976, as amended by the Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013, to substitute a reference to the NCA for an existing reference to SOCA. **Commons Amendment 54** would designate the Director General of the NCA as the “police pension authority” and the Secretary of State as the “pension supervising authority” in relation to NCA officers who are eligible for police pensions. This ensures that the Director General is responsible for the administration of the pensions of NCA officers, while the Secretary of State is responsible for the administration of the Director General’s own pension. **Commons Amendment 58** would provide that the Independent Police Complaints Commission can require NCA Officers to attend for interview as a witness as part of an investigation being carried out or managed. **Commons Amendments 55 to 57** would make technical and drafting amendments to the Schedule 8. They replace existing references to the Serious Organised Crime Agency, its staff and Director General in the Proceeds of Crime Act 2002 with references to the National Crime Agency, its officers and Director General. This ensures the National Crime Agency has the same powers as the Serious Organised Crime Agency to confiscate or undertake civil recovery of the proceeds of crime. **Commons Amendments 59 and 60** correct drafting errors in Schedule 8, to ensure that the courts are able to issue serious crime prevention orders to the National Crime Agency in the same way as they can for the Serious Organised Crime Agency at present.

Commons Amendments to Schedule 10: The family court

75. **Commons Amendments 61 to 74, 76 and 77, 82, 85 and 86** would amend new section 31O of the Matrimonial and Family Proceedings Act 1984, as inserted by Schedule 10 to the Bill, to change the nomenclature used in that provision from “legal adviser” to “justices clerk” and from “assistant legal adviser” to “assistant to a justices’ clerk”. These changes ensure that the terminology used in Schedule 10 reflects titles already used in the magistrates’ courts.

76. **Commons Amendment 75** would make an associated consequential amendment by omitting the new section 31P of the Matrimonial and Family Proceedings Act 1984. Existing legislation, in the Courts Act 2003, relating to indemnity against legal costs and orders for legal costs in relation to justices’ clerks and assistants to justices’ clerks apply to all people in such roles, including in the future those working in the family court. This means that new section 31P of the Matrimonial and Family Proceedings Act 1984, which made mirroring provision for these matters in respect of legal advisers and assistants in the family court, will no longer be needed.

77. **Commons Amendment 78** would amend section 1(1) of the Maintenance Orders Act 1958 (“the 1958 Act”) so as to provide that the family court may vary maintenance orders registered in that court, subject to the provisions of Part 1 of the 1958 Act. This reflects the current powers to vary registered orders available to magistrates’ courts. **Commons Amendment 79** would reinstate and amend section 4 of the Maintenance Orders Act 1958,

which would have been repealed under the Bill as introduced. Subsections (1), (2), (4) and (5) of section 4 of the 1958 Act would be amended to provide that the powers of the family court to vary the rate of payments of registered maintenance orders and to remit applications for such variations to the High Court match the current powers of the magistrates' courts. Subsections (2A) to (2C), (5A) and (5B) of section 4 of the 1958 Act would be omitted as they refer to provisions in the Magistrates' Courts Act 1980 which the Bill amends or omits as magistrates' courts will no longer exercise jurisdiction in family proceedings. Subsections (6A) and (6B) of the 1958 Act would be amended to preserve the current restrictions on the court of registration's powers to vary certain orders registered under the 1958 Act. **Commons Amendments 80, 81, 83 and 84** would remove references to an officer of the court in sections 5(5) of the 1958 Act and section 1(4A) of the Maintenance Enforcement Act 1991 so as to ensure consistent terminology is used across all Acts dealing with the possibility of payments under maintenance orders being made to the family court. **Commons Amendments 87 to 90** would make amendments to the entries relating to the Administration of Justice Act 1970, the Administration of Justice Act 1977, the Matrimonial and Family Proceedings Act 1984 and the Civil Partnership Act 2004 in the table of repeals and revocations at Part 3 of Schedule 10 to the Bill, which are consequential upon the re-instatement of section 4 of the 1958 Act.

Commons Amendments to Schedule 11: Transfer of jurisdiction to family court

78. **Commons Amendment 91** would insert new section 22(1A) into the Maintenance Orders Act 1950 in place of the current section 22 (1A) to (1E). It enables the family court to exercise the same powers in relation to maintenance orders made by a sheriff court in Scotland or a court of summary jurisdiction in Northern Ireland and registered in the family court in accordance with section 1 of the Maintenance Enforcement Act 1991 as if the maintenance order was made by the family court itself. **Commons Amendment 92** would make a consequential amendment to the Forced Marriage (Civil Protection) Act 2007 to remove a reference to a provision inserted into the Family Law 1996 which the Bill repeals to reflect that the magistrates' court will no longer have a family jurisdiction.

Commons Amendment to Schedule 14: Deployment of the judiciary

79. **Commons Amendment 130** would delete Part 2 of Schedule 14 so that the Crown Court would be removed from the scope of the flexible judicial deployment provisions provided for in that Schedule and accompanying clause 19.

Commons Amendment to Part 2 of Schedule 15: Restorative Justice

80. **Commons Amendment 132** requires those persons running restorative justice activities under the new section 1ZA of Powers of Criminal Courts (Sentencing) Act 2000 to have regard to any guidance that the Secretary of State, with a view to encouraging good practice in the delivery of such activities, issues.

Commons Amendments to Part 7 of Schedule 15: Provision for female offenders

81. **Commons Amendment 133** would remove Part 7 of Schedule 15, which was added to the Bill in the House of Lords following a division on a non-government amendment. Part 7 as introduced by the House of Lords required contracts between the Secretary of State and probation trusts to require probation trusts to make appropriate provision for the delivery of services to female offenders. This would have included making provision for women to carry out unpaid work, and to participate in rehabilitative programmes, with the particular needs of women in mind.

EUROPEAN CONVENTION ON HUMAN RIGHTS

82. In the Government's view all Commons Amendments to the Crime and Courts Bill are compatible with the European Convention on Human Rights. The Government has published a series of supplementary European Convention on Human Rights memorandums detailing human rights implications of each Amendment. These memorandums are available on the Bill webpages of the Home Office website.¹

83. It is the Government's view that the new clauses on exemplary damages and costs inserted by **Commons Amendments 11 to 19** are compatible with the Convention rights. They fall within the State's wide margin of appreciation in selecting and implementing measures to comply with its positive obligation to ensure effective enjoyment of the right to respect for private life of those within its jurisdiction.

84. The Government accepts that an award of damages or costs under these provisions may constitute an interference with the defendant's right to freedom of expression under Article 10 of the European Convention on Human Rights ("ECHR"). Any such interference would satisfy the requirement of being 'prescribed by law' (adequately accessible and formulated with sufficient precision) and would pursue the legitimate aim of protecting the reputation or rights of others.

85. In considering whether any such interference is necessary and proportionate to this aim, the question is whether the legislation is in principle incompatible with Article 10. Such authority as exists indicates that an award of exemplary damages is not, in principle, incompatible with Article 10. Nor would costs be. The compatibility of individual awards of damages or costs will of course be for the court to assess on all the relevant matters in the context of a particular case. For that reason alone there is no doubt that the clauses themselves are compatible with Article 10.

¹ <http://www.homeoffice.gov.uk/publications/about-us/legislation/crime-courts-bill/>

86. It is the Government's view that non-membership of an approved regulator does not constitute a ground on which discrimination is prohibited under Article 14 ECHR. If, contrary to the Government's position, the courts consider Article 14 to be engaged, any difference of treatment has an objective and reasonable justification, namely seeking to ensure that the claimant is not unduly prejudiced by a failure of the defendant, irrespective of whether it is a member of an approved regulator, to avail itself of the remedies available.

FINANCIAL EFFECTS OF THE COMMONS AMENDMENTS

87. None of the Commons amendments materially affect the assessment made of the financial effects of the Bill as set out in paragraphs 588 to 597 of the Explanatory Notes to the Bill as introduced in the Commons.

CRIME AND COURTS BILL [HL]

EXPLANATORY NOTES ON COMMONS AMENDMENTS

*These notes refer to the Crime and Courts Bill [HL]
as brought from the House of Commons on 19th March 2013
[HL Bill 90]*

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