

## SCHEDULES

### SCHEDULE 20

Section 50

#### EXTRADITION

#### PART 1

#### FORUM

##### *Extradition to category 1 territories*

- 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) (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;

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- (c) any belief of a prosecutor that the United Kingdom, or a particular part of the United Kingdom, is not the most 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) any delay that might result from proceeding in one jurisdiction rather than another;
  - (f) 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;
  - (g) 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.
- (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

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- (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
    - (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 territory, 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

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- (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) In England and Wales, and Northern Ireland, 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 Scotland, for the purpose of determining any questioning of a relevant certification decision, the High Court must apply the procedures and principles that would be applied by it on an application for judicial review.
- (4) 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.
- (5) Where the High Court is required to decide that question by virtue of subsection (4)—
  - (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.

### **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

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- (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—  
(a) England and Wales;  
(b) Scotland;  
(c) 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—  
(a) the designated prosecutor giving the certificate, or  
(b) 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 territories*

- 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).*”;  
(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.

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- (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 the most 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) any delay that might result from proceeding in one jurisdiction rather than another;
  - (f) 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;
  - (g) 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.

### **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

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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.
- (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.

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- (6) In relation to the extradition of any person to a category 2 territory, 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) In England and Wales, and Northern Ireland, 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 Scotland, for the purpose of determining any questioning of a relevant certification decision, the High Court must apply the procedures and principles that would be applied by it on an application for judicial review.
- (4) 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.
- (5) Where the High Court is required to decide that question by virtue of subsection (4)—
- (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.



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### **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—
    - (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 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—
    - (a) England and Wales;
    - (b) Scotland;
    - (c) 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—
    - (a) the designated prosecutor giving the certificate, or
    - (b) 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—

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(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),

as those questions stand before their amendment by this Part of this Schedule;

“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) 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 territory 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).”

*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—
- (a) begins when the Secretary of State issues a certificate under section 70 of the Extradition Act 2003 in relation to the extradition, and
  - (b) ends when the amendments made by this Part of this Schedule 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 territories*

- 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 preceding 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”).

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- (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.
- (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—

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- (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—

**“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
  - (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 1 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) at 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) 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 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—

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- (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,
- 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 territories*

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 preceding 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

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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 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 preceding 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—



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- (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.
- (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

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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 (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—

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- (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 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.

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(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."

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."

*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.