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Rt. Hon. Baroness Smith of Basildon
House of Lords
London
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29th November 2013

Dear Angela,

ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING BILL

I am writing to let you have details of a third and final tranche of Government amendments for Committee stage that I have tabled today (copy attached). These amendments relate to the extradition provisions in Part 12 of the Bill.

At Commons Report, what is now clause 149 was inserted into the Bill to provide that in cases where a person is extradited after having been sentenced time served in custody prior to extradition from another EU Member State, and purely for the purposes of extradition, must be counted as time served towards the UK sentence in all situations. This provision is designed to ensure that the Prison Act 1952 is fully compliant with Article 26 of the European Arrest Warrant (EAW) Framework Decision. The amendment made in the Commons only made provision for England and Wales. Following discussions with the Scottish Government, we have agreed that analogous provision for Scotland can be made through administrative means.

However, section 210 of the Criminal Procedure (Scotland) Act 1995, which makes provision for taking into account time spent in custody awaiting extradition to the UK, in cases where a person is extradited to be sentenced is out of date in that it refers to extradition legislation which is no longer in force. New clause *Discount on sentence for time spent in custody awaiting extradition: Scotland* amends this provision to update it in respect of extradition.

In Northern Ireland law, section 38 of the Prison Act (Northern Ireland) 1953 makes equivalent provision to section 49 of the Prison Act 1952 in cases where a person is sentenced **pre**-extradition. New clause *Discount on sentence for time spent in custody awaiting extradition: Northern Ireland* (and the consequential amendment to Schedule 9) ensures that time spent in custody awaiting extradition to the UK from an EU Member State is always credited.

There is currently no legislative provision in Northern Ireland for taking into account time spent in custody where a person is sentenced **post**-extradition. The new clause ensures that such credit is given.

The amendments to clause 159 make consequential changes to the extent provisions arising from these two new clauses.

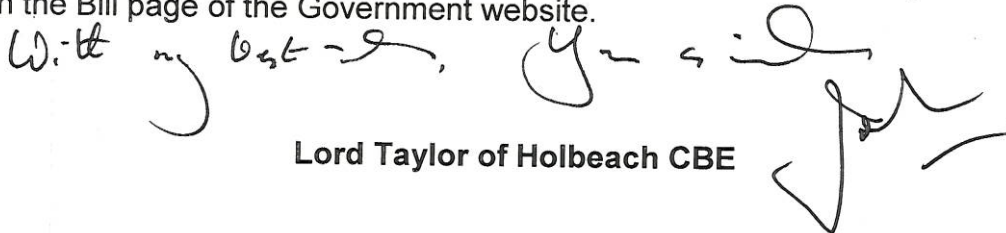
Amongst the other reforms to the operation of the EAW made by the Bill is the introduction of a proportionality bar to extradition which requires a UK judge to bar surrender to the issuing State if they consider that surrender would be disproportionate. This statutory provision will be complemented by an administrative proportionality check which will look to weed out the most trivial requests when they are first received by the National Crime Agency (NCA).

Following discussions with the senior judiciary, CPS and NCA we propose to augment the provisions in the Bill with an administrative filter operated by the NCA to help weed out cases before they come to court. To this end, the amendment to clause 138 confers a power on the Lord Chief Justice for England and Wales, with the concurrence of the Lord Justice General of Scotland and the Lord Chief Justice of Northern Ireland, to issue guidance for the NCA on the operation of the administrative proportionality check and places a duty on the NCA to follow such guidance.

Finally, new clause *Electronic transmission of European arrest warrant etc* and the associated amendment to Schedule 9, make a minor amendment to section 204 of the Extradition Act 2003, which makes provision for the information contained in an EAW to be transmitted to the United Kingdom electronically. This is needed to support the implementation of the second generation Schengen Information System (SIS II). Under SIS II, the NCA will be required to certify requests entered by another State for "arrest for surrender or extradition purposes" from the information received electronically under the SIS II process. This information will be an English language summary of the information contained within the EAW, together with the original language version of the EAW itself. Section 204 therefore requires amendment so that certification can take place on the basis of this English language summary, rather than a translation of the full contents of the EAW.

I attach a supplementary delegated powers memorandum in respect of these amendments.

I am copying this letter to all Peers who spoke at Second Reading and to Baroness Thomas of Winchester (Chairman, DPPRC), Baroness Jay of Paddington (Chairman, Constitution Committee), Dr Hywel Francis (Chair, JCHR), Keith Vaz (Chair, HASC) and Jack Dromey. I am also placing a copy in the library of the House and on the Bill page of the Government website.

With my best wishes,
Yours sincerely,


Lord Taylor of Holbeach CBE