

## Crime and Courts Bill

### Delegated Powers – Supplementary Memorandum by the Home Office

The Government has tabled further amendments to the Crime and Courts Bill for Commons Committee stage. These include a number of new or modified delegated powers. This supplementary memorandum explains in each case why the power has been taken or amended and the reason for the procedure selected.

**New Schedule ‘Proceeds of crime: civil recovery of the proceeds etc of unlawful conduct’, paragraph 6: New section 282D(11) of the Proceeds of Crime Act 2002 - power to make rules of court**

**New Schedule ‘Proceeds of crime: investigations’, paragraph 26: New section 375A(10) of the Proceeds of Crime Act 2002 - power to make rules of court (England and Wales, and Northern Ireland)**

**New Schedule ‘Proceeds of crime: investigations’, paragraph 28: New section 408A(10) of the Proceeds of Crime Act 2002 - power to make rules of court (Scotland)**

*Power conferred on:* England and Wales - The Civil Procedure Rules Committee (under section 2 of the Civil Procedure Act 1997) and the Criminal Procedure Rules Committee (under section 69 of the Courts Act 2003)

*Scotland - The Court of Session (under section 5 of the Court of Session Act 1988)*

*Northern Ireland - Sections 52 to 53A, 55 and 55A of the Judicature (Northern Ireland) Act 1978*

*Power exercisable by:* England and Wales - Rules of court made by statutory instrument

*Scotland - Rules of court made by Act of Sederunt*

*Northern Ireland - Rules of court made by statutory instrument*

*Parliamentary procedure:* England and Wales - Negative resolution

*Scotland – Laid only*

*Northern Ireland - Negative resolution*

2. New sections 282D(11), 375A(10) and 408A(10) of the Proceeds of Crime Act 2002 (POCA) set out that rules of court may make provision for the practice and procedure to be followed in connection with proceedings relating to requests for assistance made by a judge. It is appropriate that these procedural matters be dealt with in rules of court, the process for which is well established.

3. Rules made under the powers in new section 282D(11) (which relate to England, Wales and Northern Ireland) and new section 375A(10) POCA (which relate to England, Wales and Northern Ireland) are subject to the negative resolution procedure. The Government considers that the negative resolution procedure is the appropriate level of Parliamentary scrutiny. This approach mirrors that in, for example, sections 91, 351(2), 362(2), 369(2) and 375(1) POCA which confer similar rule-making powers.

4. Rules made under the power in section 282D(11) and section 408A(10) of POCA (which concern Scotland) are made by the Court of Session itself. These rules are made by Act of Sederunt (laid before the Scottish Parliament) which is the well established procedure for all Court of Session rules.

**New Schedule ‘*Proceeds of crime: investigations*’, paragraph 27(2): New section 378(3AA) of the Proceeds of Crime Act 2002 - power to specify the type of accredited financial investigator who is a senior appropriate officer in relation to a detained cash investigation**

*Power conferred on:* Secretary of State

*Power exercisable by:* Order made by statutory instrument

*Parliamentary procedure:* Negative resolution

5. New section 375A of POCA confers a power on a senior appropriate officer to seek assistance overseas in relation to a detained cash investigation. New section 378(3AA) of POCA (which extends to England and Wales and Northern Ireland only) gives the Secretary of State a power to specify by order the type of accredited financial investigator (section 3 of POCA) who may exercise the powers of a senior appropriate officer for such investigations. A senior appropriate officer already exists for the purposes of confiscation investigations and money laundering investigations and they already include accredited financial investigators (section 378(2)(d) and (6)(c) of POCA). A system for the Secretary of State to specify a description of accredited financial investigator for a particular purpose already exists in section 453 of POCA. New section 378(3AA) refers to an order being made under the existing section 453 POCA.

6. As a result of the Secretary of State specifying who may be a senior appropriate officer, such a person may request assistance from a court, tribunal, government or authority in a country or territory outside the United

Kingdom if it is thought relevant evidence was located there, by virtue of the new section 375A(3) of POCA.

7. Given that the concept of accredited financial investigator is provided for on the face of POCA, specifying the type of investigator (in terms of the required seniority) is an appropriate level of detail to be left to secondary legislation and, for similar reasons, it is considered that the negative procedure (which applies by virtue of section 459(4) of POCA) provides an appropriate level of parliamentary scrutiny for such an order-making power.

**New clause *Deportation on national security grounds: appeals*, sub-section (4): New section 97A(2L) of the Nationality, Immigration and Asylum Act 2002 – power to make rules of court**

*Power conferred on:* Lord Chancellor

*Power exercisable by:* Rules made by Statutory Instrument

Parliamentary procedure: Affirmative Resolution

8. New Clause *Deportation on national security grounds: appeals* amends section 97A of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act). It creates a means by which a person can apply to the Special Immigration Appeals Commission (SIAC) for a review of the Secretary of State's decision to issue a certificate stating 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 ECHR. It provides that rules may be made under section 5 of the Special Immigration Appeals Commission Act 1997 (the 1997 Act) in relation to any such statutory review. New rules would provide for the new statutory reviews to be handled expeditiously.

9. The application of the rule-making power in section 5 of the 1997 Act to statutory reviews under section 97A of the 2002 Act, as amended by New Clause *Deportation on national security grounds: appeals*, reflects the usual practice that the details of court procedure will be set out in secondary legislation. Once Parliament has approved the principle of the provisions in New Clause *Deportation on national security grounds: appeals*, it would be unduly cumbersome for it to consider the detail of SIAC's procedures. A rule-making power will also allow for rules to be amended quickly if necessary.

10. Rules made in relation to statutory reviews under section 97A of the 2002 Act, as amended by New Clause *Deportation on national security grounds: appeals*, are to be made by the Lord Chancellor. This is because the Lord Chancellor is responsible for making rules for SIAC under section 5 of the 1997 Act.

11. Under section 5(9) of the 1997 Act, rules are to be made by statutory instrument subject to the affirmative resolution procedure. The same procedure will therefore apply to rules relating to New Clause *Deportation on national security grounds: appeals*. It will ensure that Parliament has an

opportunity to consider any rules before they come into force. The Government regards this level of scrutiny as necessary given the importance of the statutory reviews being created under New Clause *Deportation on national security grounds: appeals*.

12. New Clause *Deportation on national security grounds: appeals* also amends section 97A(3) of the 2002 Act, so that it refers to a new provision, in section 97A(2D), as amended. The effect of section 97A(2D) is equivalent to the existing provision in section 97A(2)(c)(iii). Consequently this is not a substantive change to the existing rule-making power in respect of appeals under section 97A(3).

13. There is currently a Henry VIII power in section 97A(4) of the 2002 Act. This permits the Secretary of State to repeal section 97A by Order. Such an Order would be subject to the negative resolution procedure in accordance with section 112(5B) of the 2002 Act. This Henry VIII power would continue to be applicable to section 97A as amended by New Clause *Deportation on national security grounds: appeals*. This is considered appropriate since any exercise of the Henry VIII power could only reduce the ability of the Secretary of State to render appeals against the making of deportation orders out of country. It is not thought necessary for Parliament to consider in primary legislation what would be an increase in the protections available to those subject to a decision to make a deportation order.

**Part 1 of new Schedule *Extradition: new sections 19F(2) and 83E(2) of the Extradition Act 2003 – power to designate prosecutor other than a member of the Crown Prosecution Service***

*Power conferred on:* Secretary of State

*Power exercisable by:* Order made by statutory instrument

*Parliamentary procedure:* Negative resolution

14. Part 1 of new Schedule *Extradition* will amend the Extradition Act 2003 (the 2003 Act) by requiring the judge at the extradition hearing to consider the issue of forum (that is, where the offence should be prosecuted). New sections 19B to 19F of the 2003 Act will apply in Part 1 cases (that is, cases concerning a request for the person's extradition to face prosecution in another EU Member State) and new sections 83A and 83E will apply in Part 2 cases (that is, cases concerning a request for the person's extradition to face prosecution in another State with which the UK has extradition arrangements).

15. Extradition will be barred by reason of forum if the judge decides that: (i) one or more of the acts material to the commission of the offence were performed in the UK; and (ii) having regard to a list of specified matters relating to the interests of justice, the extradition should not take place.

16. Extradition cannot be barred on forum grounds if a designated prosecutor issues a certificate that s/he: (i) has considered the offences for

which the person could be prosecuted in the UK; (ii) has decided that there are one or more such offences which correspond to the extradition offence; and either (iii) has decided that 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 (iv) believes that the person should not be prosecuted in the UK for a corresponding offence because there are concerns about the disclosure of sensitive material. 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 on appeal under the 2003 Act.

17. “Designated prosecutor” means a member of the Crown Prosecution Service or any other person who is: (i) a prosecutor designated for the purposes of section 19F / 83E by order made by the Secretary of State; or (ii) is within a description of prosecutors so designated. It may be necessary to designate additional prosecutors, bearing in mind agencies other than the Crown Prosecution Service have responsibility for prosecuting offences in parts of the UK and the fact the agencies responsible for prosecuting offences may change with time.

18. Orders made under new section 19F and 83E will be subject to the negative procedure, which is appropriate given that the designation of any further prosecutors will simply reflect the fact that those agencies are the agencies responsible for prosecuting offences in the relevant parts of the UK at any given time.

**Home Office**  
**5 February 2013**