

## SCHEDULES

### SCHEDULE 20

#### EXTRADITION

#### 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”).
- (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.

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

18 After section 33 insert—

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

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

19 After section 33A insert—

**“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.

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- (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

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- (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—
  - (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.

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- (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 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);

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- (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—
  - (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.

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

25 After section 115A insert—

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

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

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- 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—
- (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.



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- (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.
- (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.”

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**“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.