

# **ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 12: Extradition**

##### ***Section 157: Proportionality***

465. *Subsection (2)* inserts new section 21A into Part 1 of the 2003 Act, which will require the courts, in cases where an EAW has been issued in order to prosecute a person for an offence, to consider whether extradition would be (i) disproportionate, and (ii) compatible with the Convention rights (within the meaning of the Human Rights Act 1998). Human rights considerations have hitherto been dealt with in Part 1 cases under section 21, but following the amendments made in the Act (including the amendments to section 21 made by paragraph 105 of Schedule 11) that section will only deal with Part 1 cases where the person is unlawfully at large following conviction for an offence, whilst new section 21A will deal with Part 1 cases where the person is wanted for the purpose of prosecution for an offence. Under new section 21A, in deciding whether extradition would be disproportionate, the judge will have to take into account (so far as the judge thinks appropriate) the seriousness of the conduct, the likely penalty and the possibility of the relevant foreign authorities taking less coercive measures than extradition. The judge will not be able to take into account any other matters. If the judge decides that extradition would be disproportionate, the judge will have to discharge the person.
466. *Subsection (1)* makes a consequential amendment to section 11(5) of the 2003 Act to refer to the new section 21A. As a result, in a case where the EAW has been issued in order to prosecute the person for an offence, where a judge concludes that none of the bars to extradition listed in section 11(1) applies, he or she must proceed under new section 21A to consider the issues of human rights and proportionality.
467. *Subsection (3)* inserts new subsections (7A) to (7C) into section 2 of the 2003 Act to provide for the designated authority (currently the National Crime Agency) to operate an administrative proportionality filter in cases where the Part 1 warrant has been issued for the purpose of prosecuting the person for an offence. The aim is to prevent the most disproportionate cases from reaching court. It provides that the designated authority may not issue a certificate under section 2 of the 2003 Act where it is clear that a judge proceeding under section 21A would be required to order the person's discharge on proportionality grounds. In deciding this question, the designated authority must apply guidance issued by 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, for this purpose.
468. *Subsection (4)* requires that in the event that a judge has to consider whether section 21A is compatible with the law of the European Union, the judge must have regard to Article 1(3) of the EAW Framework Decision, which sets out that that Decision shall not have the effect of modifying the obligation to respect fundamental rights and legal principles

*These notes refer to the Anti-Social Behaviour, Crime and Policing Act 2014 (c.12) which received Royal Assent on 13 March 2014*

as enshrined in Article 6 of the Treaty on the European Union. *Subsection (5)* sets out transitional arrangements for circumstances where a Part 1 warrant has been issued before section 157 comes into force.