

Anti-social Behaviour, Crime and Policing Bill

Delegated Powers – Supplementary Memorandum by the Home Office

The Government has tabled further amendments to the Anti-social Behaviour, Crime and Policing Bill for Lords Committee stage. These include one new delegated power. This supplementary memorandum explains why the power has been taken and the reason for the procedure selected.

New subsections (7A) to (7C) of clause 138: Power to issue guidance in respect of certification of Part 1 warrants (proportionality)

Power conferred on: Lord Chief Justice of England and Wales with the concurrence of the Lord Justice General of Scotland and the Lord Chief Justice of Northern Ireland

Power exercisable by: Statutory guidance

Parliamentary procedure: None

2. The purpose of the power in new subsections (7A) to (7C) of clause 138 is to enable the Lord Chief Justice of England and Wales, with the concurrence of the Lord Justice General of Scotland and the Lord Chief Justice of Northern Ireland, to issue guidance (and to revise, withdraw and replace it) to the National Crime Agency (“the NCA”) which it must apply in deciding whether to issue a certificate under section 2 of the Extradition Act 2003 (“the 2003 Act”) (as amended by clause 138).

2. Section 2 of the 2003 Act applies if the NCA receives a European Arrest Warrant (being a warrant issued by another Member State of the EU further to Framework Decision 2002/584/JHA in respect of a person who is wanted for the purposes of prosecution or to serve a sentence). Provided the warrant satisfies certain conditions, the NCA may issue a certificate under section 2, with the effect that the warrant may be executed by a constable or a customs officer in the United Kingdom. Clause 138 amends section 2 to stipulate that the NCA must not issue a certificate if it is clear to the NCA that a judge proceedings under section 21A of the 2003 Act would be required to order the person’s discharge on the basis that extradition would be disproportionate. In deciding that issue, the NCA must apply any guidance issued by the Lord Chief Justice under the clause, as amended.

3. There is no parliamentary procedure for the issue of the guidance as the content of the guidance will be a matter for the judiciary, bearing in mind the terms of section 21A of the 2003 Act (which sets out the matters which a judge must take into account when deciding whether extradition would be disproportionate).

Home Office
29 November 2013