

ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 12: Extradition

Section 156: Extradition barred if no prosecution decision in requesting territory

462. *Subsection (2)* inserts new section 12A into the 2003 Act, which provides for a new bar to extradition in Part 1 cases on the grounds of “absence of prosecution decision”. This is intended to ensure that a case is sufficiently advanced in the issuing State (that is, there is a clear intention to bring the person to trial) before extradition can occur, so that people do not spend potentially long periods in pre-trial detention following their extradition, whilst the issuing State continues to investigate the offence.
463. New section 12A will ensure that, in cases where the person is wanted to stand trial, extradition can only go ahead where the issuing State has made a decision to charge the person and a decision to try the person (or is ready to make those decisions). Where it appears to the judge, from considering all relevant information and evidence, that there are reasonable grounds for believing that a decision to charge and a decision to try have not both been taken in the issuing State (and that the person’s absence from that State is not the only reason for that), extradition will be barred unless the issuing State can prove that those decisions have been made (or that the person’s absence from that State is the only reason for the failure to take the decision(s)). The courts have interpreted the provisions of the 2003 Act in a “cosmopolitan” way,¹ mindful of the differences in criminal procedure in other Member States, and it is anticipated that the courts will apply the same approach to the interpretation of section 12A and, in particular, the concepts “decision to charge” and “decision to try”.
464. *Subsection (1)* makes a consequential amendment to section 11(1) of the 2003 Act which requires a judge to consider whether any of the bars to extradition applies. *Subsection (3)* sets out transitional arrangements for cases where a Part 1 warrant (within the meaning of the 2003 Act) has been issued before section 156 is brought into force.

¹ *Asztalos v Szekszard City Court Hungary* [2010] EWHC 237 (Admin)