

EXPLANATORY MEMORANDUM TO
THE CIVIL JURISDICTION AND JUDGMENTS (PROTECTION MEASURES)
REGULATIONS 2014

2014 No. 3298

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument's main purpose is to facilitate the implementation, in England and Wales and Northern Ireland, of Regulation No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters¹ (the "Protection Measures Regulation"), which comes into force on 11 January 2015. It is one of a set of statutory instruments containing provision for this purpose (details of the other instruments are given below).

2.2 This instrument also amends the Access to Justice (Northern Ireland) Order 2003 to ensure compliance in Northern Ireland of Council Directive 2003/8/EC of 27 January 2003 to improve access to justice in cross-border disputes² ("the Cross-border Directive").

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The instrument is being made under section 2(2) of the European Communities Act 1972 (the "1972 Act") principally to ensure for England and Wales and Northern Ireland that the UK's obligations under the Protection Measures Regulation are met.

4.2 There are three further instruments, made under separate powers, which contain provision for implementation of the Protection Measures Regulation in England and Wales. Those instruments, which are being laid before Parliament at the same time as this instrument and also come into force (so far as relevant to the Protection Measures Regulation) on 11 January 2015, are—

- the Family Procedure Amendment (Amendment No. 4) Rules 2014 (S.I. 2014/3296);

¹ OJ L 181, 29.6.2013, p. 4-12.

² OJ L 26, 31.1.2003, p. 41-47.

- the Family Court (Composition and Distribution of Business) (Amendment) Rules 2014 (S.I. 2014/3297); and
- the Civil Procedure (Amendment No. 8) Rules 2014 (S.I. 2014/3299).

4.3 The Protection Measures Regulation applies to protection measures issued in civil matters only. A separate EU instrument applies to protection measures issued in criminal matters -- Directive 2011/99/EU of the European Parliament and Council of 13 December 2011 on the European protection order. Separate Regulations are being made under section 2(2) of the 1972 Act to implement for England and Wales the UK's obligations under that Directive

5. Territorial Extent and Application

5.1 This instrument extends to England and Wales and Northern Ireland only.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The objective of the Protection Measures Regulation is to provide for recognition and enforcement in any EU Member State (except Denmark which is not bound by it) of 'protection measures' issued in any other Member State (except Denmark). 'Protection measures' (defined in the Protection Measures Regulation) are essentially obligations on a 'person causing the risk' to stay away from or refrain from contacting a 'protected person'. Such measures are found most commonly in the law of England and Wales in non-molestation orders under Part 4 of the Family Law Act 1996 or injunctions under section 3 of the Protection from Harassment Act 1997.

7.2 The Protection Measures Regulation enables a 'protected person' who has had his or her 'protection measure' certified by the judicial or other authority that issued it, to travel to any other Member State (except Denmark) and have the protection of that measure effectively travel with her or him for up to twelve months. In particular, a 'protected person' need not undertake any court proceedings in the other Member State to secure recognition of the measure because recognition is automatic. The protected person can bring enforcement proceedings in that other Member State if necessary, and enforcement is left to the law of the Member State in which it is sought.

7.3 The provision made by this instrument does the following—

- (a) confers jurisdiction on certain courts for proceedings under the Protection Measures Regulation in relation to protection measures issued in another Member State, referred to as 'incoming protection measures' (for measures

issued in the UK, the Regulation provides for the court issuing the measure to have jurisdiction for related proceedings);

- (b) makes the “incoming” jurisdiction concurrent amongst the courts specified for England and Wales, and similarly amongst the courts specified for Northern Ireland, so that there is no question of having to decide whether an incoming protection measure or applicant met any requisite grounds of jurisdiction for a particular court;
- (c) confers jurisdiction and powers on certain courts in Northern Ireland to deal with appeals from decisions made under the Protection Measures Regulation (not necessary for England and Wales where existing general provision for appeals is sufficient);
- (d) provides for the courts enforcing incoming protection measures to have the same powers to do so as they have in relation to domestic protection measures;.
- (e) amends legislation in Northern Ireland that specifies that certain proceedings in the magistrates’ courts are in scope for legal aid (the provision which is amended has not yet come into force, but when it does, the amendment will also come into force and will ensure that proceedings in the magistrates’ courts for which legal aid is required to be provided under the Cross-border Directive, will also be in scope);
- (f) makes consequential provision to ensure that the privacy protections which apply to domestic proceedings in magistrates’ courts in Northern Ireland also apply to applications to those courts under the Protection Measures Regulation (not necessary for England and Wales, where the existing structure will also cover cases under the Protection Measures Regulation without amendment).

8. Consultation outcome

- 8.1 The Protection Measures Regulation will have direct effect in the UK and the provisions in this instrument essentially confer on certain courts the requisite jurisdiction and powers to conduct proceedings under the Regulation. No formal consultation on this instrument has taken place, but limited consultation was undertaken in England and Wales on these matters in the context of related rules of court with members of the judiciary and the civil and family procedure rule committees.

9. Guidance

9.1 To support the implementation of the Protection Measures Regulation and the operation of this instrument, and regulate the required processes, amendments have been made to both the Civil and Family Procedure Rules and to the Family Court (Composition and Distribution of Business) Rules, as set out earlier. Amendments are also being made to rules of court in Northern Ireland.

10. Impact

10.1 There is no foreseen impact on business, charities or voluntary bodies.

10.2 There will be a negligible impact on the public sector within the civil justice system, Further work continues to quality assure that assertion.

10.3 An Impact Assessment has therefore not been submitted in respect of this instrument.

10.4 The Protection Measures Regulation provides for a system of cross-EU protection of civil ‘protection measures’ issued in one Member State. To the extent that such protection measures will protect those individuals seeking them, it is anticipated that the Regulation and this instrument will have a beneficial impact, rather than any potential adverse impact as it extends the protection that the UK Government and courts in England and Wales and Northern Ireland consider necessary, throughout the EU.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The implementation measures taken by Member States on the EU civil Regulation and equivalent Criminal Directive will be reviewed by the European Commission 12 months after implementation, which will be January 2016.

13. Contact

Paul Ahearn at the Ministry of Justice Tel: 0203 334 3199 or email:
[Paul.Ahearn@justice.gsi.gov.uk] can answer any queries regarding the instrument.