

POLICY NOTE

THE CIVIL PROTECTION MEASURES, EUROPEAN PROTECTION ORDER AND VICTIMS' RIGHTS (EU EXIT) (SCOTLAND) (AMENDMENT ETC.) REGULATIONS 2022

SSI 2022/249

The above instrument was made in exercise of the powers conferred by paragraph 1(1) and (3) of schedule 2 and paragraph 21(a)(i) and (b) of schedule 7 of the European Union (Withdrawal) Act 2018. The instrument is subject to negative procedure.

Purpose of the instrument.

These Regulations address deficiencies in EU law and remove EU references which are no longer appropriate arising from the withdrawal of the UK from the European Union. They do so in relation to:

- EU Regulation 606/2013 on mutual recognition of protection measures in civil matters.¹
- Directive 2011/99/EU on the European protection order.²
- Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime³ in respect of the Victims and Witnesses (Scotland) Act 2014.

Policy Objectives

This instrument will address deficiencies in EU law and will remove EU references which are no longer appropriate arising from the withdrawal of the UK from the European Union.

In particular, it:

- Amends legislation relating to EU Regulation 606/2013 to allow the continuing recognition of incoming measures and removing requirements on Scottish courts to issue outgoing measures.
- Revokes legislation relating to Directive 2011/99/EU.
- Amends the Victims and Witnesses (Scotland) Act 2014 to correct a minor deficiency in the Act following the UK's withdrawal from the European Union.

Explanation of the law being amended by the regulations

EU Regulation 606/2013

EU Regulation 606/2013 provides for mutual recognition across the EU member states ("MS") (other than Denmark) of civil protection measures. A protection measure is a decision

¹ [EUR-Lex - 32013R0606 - EN - EUR-Lex \(europa.eu\)](#)

² [EUR-Lex - 32011L0099 - EN - EUR-Lex \(europa.eu\)](#)

³ [EUR-Lex - 32012L0029 - EN - EUR-Lex \(europa.eu\)](#)

ordered by an issuing authority of a MS which imposes restrictions on an individual with a view to protecting another person. In Scotland, this would cover an interdict and civil non-harassment order.

Under the EU Regulation:

- a protection measure issued in one MS can be recognised and enforced in another;
- when a protected person wishes to invoke the protection measure in another MS they can apply to the court which issued the order for a multilingual standard certificate;
- the measure is recognised in another MS for up to 12 months.

A person who wishes to invoke their protection measure in another MS is required to produce a copy of the protection measure; a certificate issued by the originating MS; and a translation where necessary. The procedure for enforcement is governed by the law of the MS where it is invoked. Notably, the person causing the risk must be alerted that the protection measure has been invoked in another MS.

Directive 2011/99/EU

The European Protection Order Directive established between EU MS a system to facilitate the mutual recognition of certain kinds of “protective orders” made in criminal proceedings so that such orders could be transferred between EU MS and be enforceable. These protection measures protect persons from the criminal conduct of offenders by imposing prohibitions or restrictions (e.g. stopping an offender from contacting a protected person).

Directive 2012/29/EU

This Directive established minimum standards on the rights, support and protection of victims of crime.

Reasons for and effect of the proposed change or changes on retained EU law

EU Regulation 606/2013

EU Regulation 606/2013 requires legislation to address deficiencies arising from EU exit using powers under the European Union (Withdrawal) Act 2018.

Those deficiencies have already been legislated for as regards England, Wales and Northern Ireland in the Mutual Recognition of Protection Measures in Civil Matters (Amendment) (EU Exit) Regulations 2019: SI 2019/493⁴.

In that SI, civil protection measures made in the EU will continue to be recognised and may be enforced in England and Wales and Northern Ireland. However, on the basis that it cannot be assumed that the EU will continue to recognise and enforce protection measures issued in the UK, the provisions in the legislation relating to outgoing measures are revoked.

⁴ [The Mutual Recognition of Protection Measures in Civil Matters \(Amendment\) \(EU Exit\) Regulations 2019 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukdsi/2019/01/01/493)

The Scottish Government considers there is value in continuing to recognise incoming measures in the context of both tackling domestic abuse and continued alignment with the EU. Therefore, this instrument takes a similar approach for Scotland as was taken for England and Wales and Northern Ireland so that incoming measures from other EU countries can continue to be recognised and enforced under the same procedure as they are now.

The Scottish Government also considered whether to retain those parts of the Regulation that relate to outgoing measures. However, in EU law the Regulation operates on a reciprocal basis. As the UK is no longer a member of the EU, MS are no longer obliged under the Regulation to recognise and enforce civil protection measures issued in the UK. Therefore, provisions relating to outgoing measures are revoked by this instrument.

Directive 2011/99/EU

The Scottish Government has considered whether these provisions could be retained but has concluded that this would not be possible. Directive 2011/99/EU provides for the issue and mutual recognition of European Protection Orders (“EPOs”). EPOs are a creation of EU law, but an EPO reflects the terms of a protection measure already in place under the domestic law of the issuing state. An EPO can only be issued when the person protected by the protection measure intends to reside, or already resides, in another MS. As the UK is no longer an MS, EPOs can no longer be issued in the EU based on the protected person’s residence in any part of the UK.

In relation to outgoing EPOs, the measures are not sustainable without continuing reciprocity and co-operation from EU MS. Clearly, now that the UK is no longer a member of the EPO such conditions do not exist.

This SSI therefore revokes the provisions implementing Directive 2011/99/EU in their entirety meaning that Scotland will no longer recognise incoming EPOs from EU MS nor issue EPOs in the hope that they will still be recognised.

Directive 2012/29/EU

The Victims’ Rights (Scotland) Regulations 2015 (SSI 2015/444)⁵ (“the Victims’ Rights Regulations”) amended the Victims and Witnesses (Scotland) Act 2014 to implement EU Directive 2012/29 which established minimum standards on the rights, support and protection of victims of crime.

The majority of the Victims’ Rights Regulations and the 2014 Act provisions were unaffected by EU exit. However, section 3J of the 2014 Act, inserted by regulation 9 of the Victims’ Rights Regulations, poses a minor deficiency in the legislation which is remedied by this instrument.

Section 3J of the 2014 Act, provides that if a complaint is made to a Police Officer in Scotland about an offence or alleged offence in the EU and criminal proceedings for that offence or alleged offence cannot be raised in Scotland, the Chief Constable has to send details of the complaint to the relevant MS. In order that Victims’ rights remain protected,

⁵ <https://www.legislation.gov.uk/ssi/2015/444/contents/made>

the wording in section 3J of the 2014 Act has been amended slightly to reflect the UK is no longer an EU Member State while ensuring the substance of the provision remains in place.

Statements required by European Union (Withdrawal) Act 2018

Statement that in their opinion Scottish Ministers consider that the regulations do no more than is appropriate

The Minister for Community Safety, Ash Regan has made the following statement:

“In my view the Civil Protection Measures, European Protection Order and Victims’ Rights (EU Exit) (Scotland) (Amendment Etc.) Regulations 2022 do no more than is appropriate.

This is the case because the Regulations only repeal or revoke retained EU law to the extent that it is incapable of being given effect as a result of the UK’s departure from the EU. In other respects the Regulations modify retained EU law to the extent required to enable it to have continued effect.”

Statement as to why the Scottish Ministers consider that there are good reasons for the regulations and that this is a reasonable course of action

The Minister for Community Safety, Ash Regan has made the following statement:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action.

This is the case because the UK has left the EU and legislation is required to remedy references to EU regulations and directives which can no longer be applied. Where possible, we have retained provisions such as provisions to recognise incoming civil protection measures from EU Member States under EU Regulation 606/2013”.

Statement as to whether the SSI amends, repeals or revokes any provision of equalities legislation, and, if it does, an explanation of that amendment, repeal or revocation

The Minister for Community Safety, Ash Regan has made the following statement:

“In my view the Civil Protection Measures, European Protection Order and Victims’ Rights (EU Exit) (Scotland) (Amendment Etc.) Regulations 2022 do not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts”.

Statement that Scottish Ministers have, in preparing the regulations, had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010

The Minister for Community Safety, Ash Regan has made the following statement:

“In my view the Civil Protection Measures, European Protection Order and Victims’ Rights (EU Exit) (Scotland) (Amendment Etc.) Regulations 2022 have had due regard to the need to

eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010”.

Additional information

An indication of how the regulations should be categorised in relation to the significance of the change proposed.

Low/medium.

There was limited use of the protection measures, even before Brexit. Statistics held by the Scottish Government in relation to Scotland show one European Protection order, registered in the 2017-18 financial year. These statistics also show eight Civil Protection Measures were registered, seven in 2017-18 and one in 2019-20. The provisions relating to victims’ rights remain in place, with minor changes to wording to reflect that the UK is no longer an EU Member State.

The Scottish Ministers’ reasons for their choice of procedure

Negative.

The mandatory affirmative procedure in terms of paragraph 1(2) of schedule 7 of the 2018 Act does not apply. There are amendments to primary legislation but given that the number of EU certificates relating to protection orders was very low even before Brexit, given that the UK’s withdrawal from the EU has of itself largely deprived the provisions being repealed and revoked of any effect, and given that the changes being made by the SSI to the victims and witnesses legislation are minor, the Scottish Ministers consider it appropriate for the SSI to be subject to the negative procedure.

Consultation

The Scottish Ministers considered that consultation was required with the Secretary of State under paragraph 4 of schedule 2 of the European Union (Withdrawal) Act 2018 as the SSI would remove mutual recognition, and enforcement provisions, relating to EU protection measures. Therefore, the Scottish Ministers have consulted with the Secretary of State.

Impact Assessments

The Scottish Government has prepared an Equality Impact Assessment (EQIA) and a screening exercise for a Child Rights and Wellbeing Impact Assessment (CRWIA).

Financial Effects

The Minister for Community Safety confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Justice Directorate

August 2022