

**EXPLANATORY MEMORANDUM TO**  
**THE CRIMINAL JUSTICE (EUROPEAN PROTECTION ORDER) (ENGLAND AND**  
**WALES) REGULATIONS 2014**

**2014 No. 3300**

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 The Criminal Justice (European Protection Order) (England and Wales) Regulations 2014 will give effect, in England and Wales, to Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European Protection Order<sup>1</sup> (“the Directive”), which comes into force on 11 January 2015. It is one of a set of statutory instruments giving effect to the Directive (details of the other instruments are set out at paragraph 5.1).
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 to ensure for England and Wales that the UK’s obligations under the Directive are met.
  - 4.2 The Directive applies to protection measures made in criminal matters only. A separate EU instrument applies to protection measures issued in civil matters – EU Regulation No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters<sup>2</sup> (“the Protection Measures Regulation”). Separate Regulations under section 2(2) of the 1972 Act, as well as several related secondary instruments, are being made to facilitate implementation, in England and Wales and Northern Ireland, of the UK’s obligations under the Protection Measures Regulation.
5. **Territorial Extent and Application**
  - 5.1 This instrument extends to England and Wales only.

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<sup>1</sup> OJ No. L 338, 21.12.2011, p. 2.

<sup>2</sup> OJ No. L 181, 29.6.2013, p. 4-12.

## **6. European Convention on Human Rights**

6.1 Shailesh Vara, Minister for the Courts and Legal Aid has made the following statement regarding Human Rights:

“In my view, the provisions of the Criminal Justice (European Protection Order) (England and Wales) Regulations 2014 are compatible with Convention rights”.

## **7. Policy background**

7.1 The policy objective of the Directive (which is not binding on Denmark or Ireland) is to provide for the mutual recognition between EU Member States of ‘protection measures’ in criminal proceedings. These protection measures are essentially measures preventing individuals from entering areas or approaching or contacting a ‘protected person’. In England and Wales this would include restraining orders made under the Protection from Harassment Act 1997 or bail conditions. The ‘protected person’ who has the benefit of one of these protections can ask the courts to issue a European Protection order (“EPO”) if they intend to reside or stay in a different member State. For the first time, a person who has an EPO issued in one member State will be able to travel to another EU member State (‘the executing State’) and get protection equivalent to that provided by the domestic protection measure, without the need for new court proceedings. Unless certain exceptions apply, an EPO issued by one member State can therefore be recognised and given effect by another member State automatically. Enforcement of the protection measure imposed in the executing State on the back of the EPO is left to the national law of that State.

As the Protection Measures Regulation provides for a system of cross-EU protection of civil ‘protection measures’ issued in one Member State, it is anticipated that the Regulation and this instrument will have a beneficial impact for British citizens and vulnerable individuals as it offers a mechanism to extend the protection that the courts in England and Wales consider necessary when a protected person decides to live or stay in a different member State.

7.2 Provision included in this instrument does the following –

(a) enables a magistrates’ court (or in some cases the Crown Court) to make an EPO on the application of a protected person, providing that the court is satisfied that a protection measure is already in place, and that the protected person either resides or stays, or has decided to do so in another member State. When deciding whether or not to make an EPO the court must also take certain other matters into account, including, for example the seriousness of the need for protection of the protected person whilst they are residing or staying in another member State;

(b) enables magistrates’ courts to recognise or refuse to recognise requests to recognise an EPO received from another member State. Grounds for refusal can

range from administrative issues, such as the EPO application being incomplete, to the fact that the conduct on which the protection measure being applied for in the EPO was based would not constitute an offence under domestic law in England and Wales.

(c) requires a magistrates' court to give effect to an incoming EPO by making a restraining order, and modifies section 5 of the Protection from Harassment Act 1997 accordingly. Breach of a restraining order under the law of England and Wales is a criminal offence;

(d) confers certain duties on magistrates' courts in respect of incoming EPO's including, to ensure the competent authority of the issuing Member State (i.e. the State which issued the original domestic protection measure and EPO) is told of the reasons for the court's decision in the event of a refusal; or to request further information before refusing to recognise the EPO, if the application is incomplete.

(e) imposes certain duties on magistrates courts to ensure the person causing the risk of harm, the protected person and the competent authority of the issuing Member State are told of the restraining order and the possible legal consequences of breach. It also places a duty on a magistrates' courts – subject to exemptions – to amend a restraining order, when the issuing Member State has modified the restrictions placed on the person causing the risk of harm under the EPO.

## **8. Consultation outcome**

8.1 No formal consultation on this instrument has taken place as the UK Government opted in to the Directive at the outset and is therefore bound to implement its provisions into domestic law. The agents of delivery are chiefly public authorities and those have been engaged in the development of the policy and legislation.

## **9. Guidance**

9.1 The Ministry of Justice will publish any necessary guidance on the effect of these changes.

## **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 criminal justice system.

10.3 An Impact Assessment has therefore not been prepared for this instrument.

**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 Directive and its civil equivalent the Protection Measures Regulation will be reviewed by the European Commission 12 months after implementation, which will be January 2016.

**13. Contact**

13.1 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.