

EXPLANATORY MEMORANDUM TO

The Criminal Justice (European Protection Order) (Northern Ireland)

SR 2014 No. 320

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department of Justice to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under section 2(2) of the European Communities Act 1972 (the DOJ is designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to criminal justice (S.I. 2012/2751)) and is subject to the negative resolution procedure.

2. Purpose

- 2.1. The purpose of the Statutory Rule is give effect to Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European Protection Order (“the Directive”), which comes into force on 11 January 2015. The Statutory Rule will allow "protection measures" from across EU member States to be recognised and operate in Northern Ireland.

3. Background

- 3.1. The policy objective of the Directive 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 Northern Ireland this would include restraining orders made under the Protection from Harassment (Northern Ireland) Order 1997 or bail conditions.
- 3.2. 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.
- 3.3. As the Protection Measures Regulation provides for a system of cross-EU protection of ‘protection measures’ issued in one Member State, it is anticipated that the Regulation and this instrument will have a beneficial impact for Northern Ireland citizens and vulnerable individuals as it offers a mechanism to extend the protection that the courts in Northern Ireland

consider necessary when a protected person decides to live or stay in a different member State.

- 3.4. Provisions included in this instrument do the following –
- 3.5. They enable a magistrates' 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;
- 3.6. They enable a magistrates' court 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 Northern Ireland.
- 3.7. They require a magistrates' court to give effect to an incoming EPO by making a restraining order, and modifies Article 7 of the Protection from Harassment (Northern Ireland) Order 1997 accordingly. Breach of a restraining order under the law of Northern Ireland is a criminal offence.
- 3.8. They confer 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.
- 3.9. They impose 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. They also place 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.

4. Consultation

- 4.1. No formal consultation on this instrument has taken place as the United Kingdom Government opted in to the Directive at the outset and constituent jurisdictions are 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.

5. Equality Impact

- 5.1. The Regulations are a requirement of the specified EU Directive which itself has been subject to equality and human rights assessment. The Regulations improve the protections available to all vulnerable individuals who may move between member States. They will be of equal benefit to

all and are therefore in compliance with section 75 of the Northern Ireland Act 1998.

6. Regulatory Impact

- 6.1. There is no foreseen impact on business, charities or voluntary bodies. An Impact Assessment has therefore not been prepared for this instrument.

7. Financial Implications

- 7.1. There will be a negligible financial impact on the public sector within the criminal justice system.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. The Regulations have been assessed as being compatible with Convention rights and are a requirement of Community law. The procedures being introduced will be available to all of those, without discrimination, who need member State protection measures recognised and if necessary enforced by the criminal justice system in Northern Ireland.

9. EU Implications

- 9.1. The Regulations implement Northern Ireland's requirements arising from Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European Protection Order ("the Directive"). The Directive and these Rules will come into force on 11 January 2015.

10. Parity or Replicatory Measure

- 10.1. The Regulations maintain parity with equivalent subordinate legislation in England and Wales to ensure that a consistent approach to the recognition of protection measures is provided in both jurisdictions.

11. Additional Information

- 11.1. 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 ("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 Northern Ireland in conjunction with England and Wales of the United Kingdom's obligations under the Protection Measures Regulation.