

## THE EUROPEAN PROTECTION ORDER (SCOTLAND) REGULATIONS 2015

### TRANSPOSITION NOTE ON DIRECTIVE 2011/99 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE EUROPEAN PROTECTION ORDER

The European Protection Order (Scotland) Regulations 2015 (“the Regulations”) transposes EU Directive 2011/99 (“the Directive”) of 13 December 2011 on the European protection order.

The general objective of the Directive is to provide mutual recognition across the EU of criminal protection orders. Recital 5 of the Directive states that “a mechanism should be created to ensure mutual recognition among Member States of decisions concerning protection measures for victims of crime.”

The Directive seeks to allow measures which have been imposed in order to protect an individual – for example, a restriction on movement of someone who has sought to harm that person – to be extended to another Member State in which the individual decides to stay. Practically this means that protection measures issued in one EU country will have to be recognised across the entire EU. In this way, the protection will travel with the individual.

This is to be achieved through a system of European Protection Orders (“EPOs”), which will be issued, on request, by the Member State in which the protection measure is originally adopted. Upon receipt of the EPO by the receiving Member State, and subject to various conditions, an equivalent measure under domestic law is to be imposed.

Accordingly the Regulations transpose into domestic law the provisions of the Directive as outlined in the table below.

Directive Article	Objective(s) of Article	Transposition in Scotland
1	<b>Objective</b> The objective of this Article is to set out the rules allowing a judicial authority in a Member State, in which a protection measure has been adopted with a view to protecting a person against a criminal act by another person which may endanger his life, physical or psychological integrity, dignity, personal liberty or sexual integrity, to issue a European Protection Order enabling a competent authority in another Member State to continue the protection of the person in the territory of that other Member State, following criminal conduct, or alleged criminal conduct, in	This article sets out the overarching purpose of the framework decision. It does not require transposition.

	accordance with the national law of the issuing State.	
<b>2</b>	<p><b>Definitions</b> For the purposes of this Directive:</p> <p>(1) “European protection order” means a decision, taken by a judicial or equivalent authority of a Member State in relation to protection measure, on the basis of which a judicial or equivalent authority of another Member State takes any appropriate measure or measures under its own national law with a view to continuing the protection of the protected person;</p> <p>(2) “Protection measure” means a decision in criminal matters adopted in the issuing State in accordance with its national law and procedures by which one or more of the prohibitions or restrictions referred to in Article 5 are imposed on a person causing danger in order to protect a protected person against a criminal act which may endanger his life, physical or psychological integrity, dignity, personal liberty or sexual integrity;</p> <p>(3) “protected person” means a natural person who is the object of the protection resulting from a protection measure adopted by the issuing State;</p> <p>(4) “person causing danger” means the natural person on whom one or more of the prohibitions or restrictions referred to in Article 5 have been imposed;</p> <p>(5) “issuing State” means the Member State in which a protection measure has been adopted that constitutes the basis for issuing a European protection order;</p>	This Article will be transposed by virtue of new section 254A to be inserted into the Criminal Procedure (Scotland) Act 1995.

	<p>(6) “executing State” means the Member State to which a European protection order has been forwarded with a view to its recognition;</p> <p>(7) “State of supervision” means the Member State to which a judgement within the meaning of Article 2 of Framework Decision 2008/947/JHA, or a decision on supervision measures within the meaning of Article 4 of Framework Decision 2009/829/JHA, has been transferred;</p>	
<p><b>3</b></p>	<p><b>Designation of competent authorities</b></p> <p>(1) Each Member State shall inform the Commission which judicial or equivalent authority or authorities are competent under its national law to issue a European protection order and to recognise such an order, in accordance with this Directive, when that Member State is the issuing State or the executing state.</p> <p>(2) The Commission shall make the information received available to all Member States. Member States shall inform the Commission of any change to the information referred to in paragraph (1).</p>	<p>This Article is transposed by the Regulations generally. The Regulations do not expressly designate competent authorities in Scotland. However, the obligations which are to be placed on competent authorities in terms of the Directive are, in terms of the Regulations, placed on the courts in Scotland.</p>

<p><b>4</b></p>	<p><b>Recourse to a central authority</b></p> <p>(1) Each Member State may designate a central authority or, where its legal system so provides, more than one central authority, to assist its competent authorities.</p> <p>(2) A Members State may, if it is necessary as a result of the organisation of its internal judicial system, make its central authority or authorities responsible for the administrative transmission and reception of any European protection order, as well as for all other official correspondence relating thereto. As a consequence, all communication, consultations, exchanges of information, enquiries and notifications between competent authorities may be dealt with, where appropriate, with the assistance of the designated central authority or authorities of the Member State concerned.</p> <p>(3) Member States wishing to make use of the possibilities referred to in this Article shall communicate to the Commission information relating to the designated central authority or authorities. These indications shall be binding upon all the authorities of the issuing State.</p>	<p>This Article does not require transposition.</p>
<p><b>5</b></p>	<p><b>Need for an existing protection measure under national law</b></p> <p>A European protection order may only be issued when a protection measure has been previously adopted in the issuing State, imposing on the person causing danger one or more of the following prohibitions or restrictions:</p> <p>(a) a prohibition from entering certain localities, places or defined areas where the protected person</p>	<p>This Article has been transposed by virtue of new section 254A to be inserted into the Criminal Procedure (Scotland) Act 1995. The definition of “protection measures” in the new section 254A takes account of the provisions of Article 5.</p>

	<p>resides or visits;</p> <p>(b) a prohibition or regulation of contact, in any form, with the protected person, including by phone, electronic or ordinary mail, fax or any other means; or</p> <p>(c) a prohibition or regulation on approaching the protected person closer than a prescribed distance.</p>	
<p><b>6</b></p>	<p><b>Issuing of European protection order</b></p> <p>(1) A European protection order may be issued when the protected person decides to reside or already resides in another Member State, or when the protected person decides to stay or already stays in another Member State. When deciding upon the issuing of a European protection order, the competent authority in the issuing State shall take into account, inter alia, the length of the period or periods that the protected person intends to stay in the executing State and the seriousness of the need for protection.</p> <p>(2) A judicial or equivalent authority of the issuing State may issue a European protection order only at the request of the protected person and after verifying that the protection measure meets the requirements set out in Article 5.</p> <p>(3) The protected person may submit a request for the issuing of European protection order either to the competent authority of the issuing State or to the competent authority of the executing State. If such a request is submitted in the executing State, its competent authority shall transfer this request as soon as possible to the competent authority of the issuing</p>	<p>This Article has been transposed by virtue of new section 254B to be added to the Criminal Procedure (Scotland) Act 1995.</p> <p>Court rules will cover the procedural aspects in respect of applications.</p>

	<p>State.</p> <p>(4) Before issuing a European protection order, the person causing danger shall be given the right to be heard and the right to challenge the protection measure, if that person has not been granted these rights in the procedure leading to the adoption of the protection measure.</p> <p>(5) When a competent authority adopts a protection measure containing one or more of the prohibitions or restrictions referred to in Article 5, it shall inform the protected person in an appropriate way, in accordance with the procedures under its national law, about the possibility of requesting a European protection order in the case that the person decides to leave for another Member State, as well as of the basic conditions for such a request. The authority shall advise the protected person to submit an application before leaving the territory of the issuing State.</p> <p>(6) If the protected person has a guardian or representative, that guardian or representative may introduce the request referred to in paragraphs (2) and (3), on behalf of the protected person.</p> <p>(7) If the request to issue a European protection order is rejected, the competent authority of the issuing State shall inform the protected person of any applicable legal remedies that are available, under its national law, against such a decision.</p>	
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<p>7</p>	<p><b>Form and content of the European protection order</b></p> <p>The European protection order shall be issued in accordance with the form set out in Annex I to this Directive. It shall, in particular, contain the following information:</p> <p>(a) the identity and nationality of the protected person, as well as the identity and nationality of the guardian or representative if the protected person is a minor or is legally incapacitated;</p> <p>(b) the date from which the protected person intends to reside or stay in the executing State, and the period or periods of stay, if known;</p> <p>(c) the name, address, telephone and fax numbers and e-mail address of the competent authority of the issuing State;</p> <p>(d) identification (for example, through a number and date) of the legal act containing the protection measure on the basis of which the European protection order is issued;</p> <p>(e) a summary of facts and circumstances which have led to the adoption of the protection measure in the issuing State;</p> <p>(f) the prohibitions or restrictions imposed, in the protection measure underlying the European protection order, on the person causing danger, their duration and the indication of the penalty, if any, in the event of the breach of any of the prohibitions or restrictions;</p> <p>(g) the use of a technical device, if any, that has been provided to the protected person or to the person causing danger as a means of</p>	<p>This Article will be transposed by virtue of criminal court rules in accordance with the forms provided for in the Directive.</p>
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	<p>enforcing the protection measure;</p> <p>(h) the identity and nationality of the person causing danger, as well as that person's contact details;</p> <p>(i) where such information is known by the competent authority of the issuing State without requiring further inquiry, whether the protected person and/or the person causing danger has been granted free legal aid in the issuing State;</p> <p>(j) a description, where appropriate, of other circumstances that could have an influence on the assessment of the danger that confronts the protected person;</p> <p>(k) an express indication, where applicable, that a judgement within the meaning of Article 2 of Framework Decision 2008/947/JHA, or a decision on supervision measures within the meaning of Article 4 of Framework Decision 2009/829/JHA, has already been transferred to the State of supervision, when this is different from the State of execution of the European protection order, and the identification of the competent authority of that State for the enforcement of such a judgement or decision.</p>	
<p><b>8</b></p>	<p><b>Transmission procedure</b></p> <p>(1) Where the competent authority of the issuing State transmits the European protection order to the competent authority of the executing State, it shall do so by any means which leaves a written record so as to allow the competent authority of the executing State to establish its authenticity. All official communication shall also</p>	<p>New section 254B (5) to be inserted into the Criminal Procedure (Scotland) Act 1995 places a duty on the issuing court to transmit the EPO to the competent authority of the executing state. The transmission procedure detailed in Article 8 will be transposed by both court rules and administrative steps taken by the courts in compliance with those rules.</p>

	<p>be made directly between those competent authorities.</p> <p>(2) If the competent authority of either the executing State or the issuing State is not known to the competent authority of the other State, the latter authority shall make all the relevant enquiries, including via the contact points of the European Judicial Network referred to in Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network, the National Member of Eurojust or the National System for the coordination of Eurojust of its State, in order to obtain the necessary information.</p> <p>(3) Where an authority of the executing State which receives a European protection order has no competence to recognise it, that authority shall, ex officio, forward the European protection order to the competent authority and shall, without delay, inform the competent authority of the issuing State accordingly by any means which leaves a written record.</p>	
<p><b>9</b></p>	<p><b>Measures in the executing State</b></p> <p>(1) Upon receipt of a European protection order transmitted in accordance with Article 8, the competent authority of the executing State shall, without undue delay, recognise that order and take a decision adopting any measure that would be available under its national law in a similar case in order to ensure the protection of the protected person, unless it decides to invoke one of the grounds for non-recognition referred to in Article 10. The executing State may apply, in accordance with its national law, criminal, administrative or civil</p>	<p>This Article will be transposed by new sections 254C &amp; D to be inserted into the Criminal Procedure (Scotland) Act 1995.</p> <p>Court rules will set out the procedure for the notifications and for dealing with incomplete applications.</p>

	<p>measures.</p> <p>(2) The measure adopted by the competent authority of the executing State in accordance with paragraph (1), as well as any other measure taken on the basis of a subsequent decision as referred to in Article 11, shall to the highest degree possible, correspond to the protection measure adopted in the issuing State.</p> <p>(3) The competent authority of the executing State shall inform the person causing danger, the competent authority of the issuing State and the protected person of any measures adopted in accordance with paragraph 11(2). The address or other contact details of the protected person shall not be disclosed to the person causing danger unless such details are necessary in view of the enforcement of the measure adopted in accordance with paragraph (1).</p> <p>(4) If the competent authority in the executing State considers that the information transmitted with the European protection order in accordance with Article 7 is incomplete, it shall without delay inform the competent authority of the issuing State by any means which leaves a written record, assigning a reasonable period for it to provide the missing information.</p>	
<p><b>10</b></p>	<p><b>Grounds for non-recognition of a European protection order</b></p> <p>(1) The competent authority of the executing State may refuse to recognise a European protection order in the following circumstances:</p> <p>(a) the European protection order</p>	<p>This Article will be transposed by virtue of new section 254C to be inserted into the Criminal Procedure (Scotland) Act 1995.</p> <p>Criminal court rules will set out the procedure in relation to notifications.</p>

	<p>is not complete or has not been completed within the time limit set by the competent authority of the executing State;</p> <p>(b) the requirements set out in Article 5 have not been met;</p> <p>(c) the protection measure relates to an act that does not constitute a criminal offence under the law of the executing State;</p> <p>(d) the protection derives from the execution of a penalty or measure that, according to the law of the executing State, is covered by an amnesty and relates to an act or conduct which falls within its competence according to that law;</p> <p>(e) there is immunity conferred under the law of the executing State on the person causing danger, which makes it impossible to adopt measures on the basis of a European protection order;</p> <p>(f) criminal prosecution, against the person causing danger, for the act or the conduct in relation to which the protection measure has been adopted is statute-barred under the law of the executing State, when the act or the conduct falls within its competence under national law;</p> <p>(g) recognition of the European protection order would contravene the ne bis in idem principle;</p> <p>(h) under the law of the executing State, the person causing danger cannot, because of that persons age, be held criminally responsible for the act of the conduct in relation to which the protection measure has been adopted;</p>	
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	<p>(i) the protection measure relates to a criminal offence which, under the law of the executing State, is regarded as having been committed, wholly or for a major or essential part, within its territory.</p> <p>(2) Where the competent authority of the executing State refuses to recognise a European protection order in application of one of the grounds referred to in paragraph (1), it shall:</p> <p>(a) without undue delay, inform the issuing State and the protected person of this refusal and of the grounds relating thereto;</p> <p>(b) where appropriate, inform the protected person about the possibility of requesting the adoption of a protection measure in accordance with its national law;</p> <p>(c) inform the protected person of any applicable legal remedies that are available under its national law against such a decision.</p>	
<p><b>11</b></p>	<p><b>Governing law and competence in the executing State</b></p> <p>(1) The executing State shall be competent to adopt and to enforce measures in that State following the recognition of a European protection order. The law of the executing State shall apply to the adoption and enforcement of the decision provided for in Article 9 (1), including rules on legal remedies against decisions adopted in the executing State relating to the European protection order.</p> <p>(2) In the event of a breach of one or more of the measures taken by the executing State following the recognition of a European protection order, the competent</p>	<p>This Article will be transposed by virtue of new section 254D to be inserted into the Criminal Procedure (Scotland) Act 1995.</p>

	<p>authority of the executing State shall, in accordance with paragraph (1) be competent to:</p> <p>(a) impose criminal penalties and take any other measure as a consequence of the breach, if that breach amounts to a criminal offence under the law of the executing State;</p> <p>(b) take any non-criminal decisions related to the breach;</p> <p>(c) take any urgent and provisional measure in order to put an end to the breach, pending, where appropriate, a subsequent decision by the issuing State.</p> <p>(3) If there is no available measure at national level in a similar case that could be taken in the executing State, the competent authority of the executing State shall report to the competent authority of the issuing State any breach of the protection measure described in the European protection order of which it is aware.</p>	
<p><b>12</b></p>	<p><b>Notification in the event of a breach</b></p> <p>The competent authority of the executing State shall notify the competent authority of the issuing State or of the State of supervision of any breach of the measure or measures taken on the basis of the European protection order. Notice shall be given using the standard form set out in Annex II.</p>	<p>This Article will be transposed by new section 254D(7) to be inserted into the Criminal Procedure (Scotland) Act 1995. Criminal court rules will set out the procedure in relation to notifications with reference to the forms contained in the Directive.</p>
<p><b>13</b></p>	<p><b>Competence in the issuing State</b></p> <p>(1) The competent authority of the issuing State shall have the exclusive competence to take decisions relating to:</p> <p>(a) the renewal, review,</p>	<p>This Article will be transposed by virtue of new section 254E to be inserted into the Criminal Procedure (Scotland) Act 1995.</p> <p>Criminal court rules will set out the procedures for modifications,</p>

	<p>modification, revocation and withdrawal of the protection measure and, consequently of the European protection order;</p> <p>(b) the imposition of a custodial measure as a consequence of revocation of the protection measure provided that the protection measure has been applied on the basis of a judgement within the meaning of Article 2 of Framework Decision 2008/947/JHA, or on the basis of a decision on supervision measures within the meaning of Article 4 of Framework Decision 2009/829/JHA.</p> <p>(2) The law of the issuing State shall apply to decisions adopted in accordance with paragraph (1).</p> <p>(3) Where a judgement within the meaning of Article 2 of the Framework Decision 2008/947/JHA, or a decision on supervision measures within the meaning of Article 4 of Framework Decision 2009/829/JHA, has already been transferred, or is transferred after the issuing of the European protection order, to another Member State, subsequent decisions, as provided for by those Framework Decisions, shall be taken in accordance with the relevant provisions of those Framework Decisions.</p> <p>(4) When the protection measure is contained in a judgement within the meaning of Article 2 of Framework Decision 2008/947/JHA which has been transferred or is transferred after the issuing State of a European protection order to another Member State, and the competent authority of the State of supervision has made subsequent</p>	<p>revocations and notifications.</p>
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decisions affecting the obligations or instructions contained in the protection measure in accordance with Article 14 of that Framework Decision, the competent authority of the issuing State shall renew, review, modify, revoke or withdraw without delay the European protection order accordingly.

(5) The competent authority of the issuing State shall inform the competent authority of the executing State without delay of any decision taken in accordance with paragraph (1) or (4).

(6) If the competent authority in the issuing State has revoked or withdrawn the European protection order in accordance with point (a) of paragraph (1) or with paragraph (4), the competent authority in the executing State shall discontinue the measures adopted in accordance with Article 9(1) as soon as it has been duly notified by the competent authority of the issuing State.

(7) If the competent authority in the issuing State has modified the European protection order in accordance with point (a) of paragraph (1) or with paragraph (4), the competent authority in the executing State shall, as appropriate:

(a) modify the measures adopted on the basis of the European protection order, acting in accordance with Article 9; or

(b) refuse to enforce the modified prohibition or restriction when it does not fall within the types of prohibition or restrictions referred to in Article 5, or if the information transmitted with the European protection order in accordance with

	<p>Article 7 is incomplete or has not been completed within the time limit set by the competent authority of the executing State in accordance with Article 9(4).</p>	
<p><b>14</b></p>	<p><b>Grounds for discontinuation of measures taken on the basis of a European protection order</b></p> <p>(1) The competent authority of the executing State may discontinue the measures taken in execution of a European protection order:</p> <p>(a) where there is clear indication that the protected person does not reside or stay in the territory of the executing State, or has left that territory;</p> <p>(b) where, according to its national law, the maximum term of duration of the measures adopted in execution of the European protection order has expired;</p> <p>(c) in the case referred to in Article 13(7)(b); or</p> <p>(d) where a judgement within the meaning of Article 2 of Framework Decision 2088/947/JHA, or a decision on supervision measures within the meaning of Article 4 of Framework Decision 2009/829/JHA, is transferred to the executing State after the recognition of the European protection order.</p> <p>(2) The competent authority of the executing State shall immediately inform the competent authority of the issuing State and, where possible, the protected person of such decision.</p> <p>(3) Before discontinuing measures in accordance with point (b) of paragraph 1 the competent</p>	<p>This Article will be transposed by virtue of new section 254E to be inserted into the Criminal Procedure (Scotland) Act 1995.</p> <p>Criminal court rules will set out the procedural aspects.</p>

	<p>authority of the executing State may invite the competent authority of the issuing State to provide information as to whether the protection provided for by the European protection order is still needed in the circumstances of the case in question. The competent authority of the issuing State shall, without delay, reply to such an invitation.</p>	
<b>15</b>	<p><b>Priority in recognition of a European protection order</b>  A European protection order shall be recognised with the same priority which would be applicable in a similar national case, taking into consideration any specific circumstances of the case, including the urgency of the matter, the date foreseen for the arrival of the protected person on the territory of the executing State and, where possible, the degree of the risk for the protected person.</p>	<p>This Article does not require transposition.</p>
<b>16</b>	<p><b>Consultations between competent authorities</b>  Where appropriate, the competent authorities of the issuing State and of the executing State may consult each other in order to facilitate the smooth and efficient application of this Directive.</p>	<p>This Article does not require transposition.</p>
<b>17</b>	<p><b>Languages</b>  (1) A European protection order shall be translated by the competent authority of the issuing State into the official language or one of the official languages of the executing State.   (2) The form referred to in Article 12 shall be translated by the competent authority of the executing State into the official language or one of the official languages of the issuing State.</p>	<p>This Article will be transposed by criminal court rules which will make provision for the translation of forms.</p>

	<p>(3) Any Member State may, either when this Directive is adopted or at a later date, state in a declaration that it shall deposit with the Commission that it will accept a translation in one or more other official languages of the Union.</p>	
<b>18</b>	<p><b>Costs</b> Costs resulting from the application of this Directive shall be borne by the executing State, in accordance with its national law, except for the costs arising exclusively within the territory of the issuing State.</p>	<p>This Article will be transposed by criminal court rules which will make provision in relation to costs.</p>
<b>19</b>	<p><b>Relationship with other agreements and arrangements</b> (1) Member States may continue to apply bilateral or multilateral agreements or arrangements which are in force upon the entry into force of this Directive, in so far as they allow the objectives of this Directive to be extended or enlarged and help to simplify or facilitate further procedures for taking protection measures.</p> <p>(2) Member States may conclude bilateral or multilateral agreements or arrangements after the entry into force date of this Directive, in so far as they allow the objectives of this Directive to be extended or enlarged and help to simplify or facilitate the procedures for taking protection measures.</p> <p>(3) By 11 April 2012, Member States shall notify the Commission of the existing agreements and arrangements referred to in paragraph (1) which they wish to continue applying. Member States shall also notify the Commission of any new agreements or arrangements referred to in paragraph (2) within three months</p>	<p>This Article does not require transposition.</p>

	of the signing thereof.	
<b>20</b>	<p><b>Relationships with other instruments</b></p> <p>(1) This Directive shall not affect the application of Regulation (EC) No 44/2001, Regulation (EC) No 2201/2003, the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children, or the 1980 Hague Convention on the Civil Aspects of International Child Abduction.</p> <p>(2) This Directive shall not affect the application of Framework Decision 2008/947/JHA or Framework Decision 2009/829/JHA.</p>	This Article does not require transposition.
<b>21</b>	<p><b>Implementation</b></p> <p>(1) Member States shall bring into force the laws, regulations and administrative provisions to comply with this Directive by 11 January 2105. They shall forthwith inform the Commission thereof.</p> <p>When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such references shall be laid down by Member States.</p> <p>(2) Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.</p>	The transposition date of 11 January 2015 was unable to be met, however Regulation 1 provides when transposition of the Directive into domestic law will commence.
<b>22</b>	<p><b>Data collection</b></p> <p>Member States shall, in order to facilitate the evaluation of the application of this Directive,</p>	This Article does not require transposition.

	<p>communicate to the Commission relevant data related to the application of national procedures on the European protection order, at least on the number of European protection orders requested, issued and/or recognised.</p>	
<b>23</b>	<p><b>Review</b> By 11 January 2016, the Commission shall submit a report to the European Parliament and the Council on the application of this Directive. That report shall be accompanied, if necessary, by legislative proposals.</p>	<p>This Article does not require transposition.</p>
<b>24</b>	<p><b>Entry into force</b> This Directive shall enter into force on the 20<sup>th</sup> day following its publication in the Official Journal of the European Union.</p>	<p>This Article does not require transposition.</p>
<b>25</b>	<p><b>Addressees</b> This Directive is addressed to the Member States in accordance with the Treaties.</p>	<p>This Article does not require transposition.</p>