

Title: Impact Assessment for The Mutual Recognition of Protection Measures in Civil Matters (Amendment) (EU Exit) Regulations 2018 IA No: MoJ019/2018 RPC Reference No: Lead department or agency: Ministry of Justice Other departments or agencies:	Impact Assessment (IA)			
	Date: 24/01/2019			
	Stage: Final			
	Source of intervention: EU Exit			
	Type of measure: Secondary Legislation			
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Summary: Intervention and Options	RPC Opinion: N/A
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Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB in 2014 prices)	One-In, Three-Out?	Business Impact Target Status
n/a	n/a	n/a	n/a	Out of Scope

What is the problem under consideration? Why is government intervention necessary?

Regulation (EU) 606/2013 (the Protection Measures Regulation) provides a framework for the mutual recognition of “protection measures” across the EU (except Denmark). “Protection measures” are civil orders which impose certain restrictions on a person with a view to protecting another person, when the latter person’s physical or psychological integrity may be at risk. Currently, protection measures made in one EU Member State must be recognised without any special procedure being required and enforceable without the requirement for a declaration of enforceability in another EU Member State. Under the European Union (Withdrawal) Act 2018, the Protection Measures Regulation will be retained as domestic law upon EU exit and associated domestic legislation will continue to have effect in domestic law. Government intervention is necessary because, as retained, the Protection Measures Regulation and associated domestic legislation contains deficiencies that will render it unworkable post exit. In particular, the retained Protection Measures Regulation is drafted so as to apply only to EU Member States and, as such, it would not be functional in England & Wales and Northern Ireland after exit.

What are the policy objectives and the intended effects?

To ensure that vulnerable persons receive appropriate protection and to maintain the reputation of the law of England & Wales and Northern Ireland as being effective in providing protection to vulnerable people.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

- **Option 0.1 - Static acquis** – the pre- EU exit application of the Protection Measures Regulation and associated domestic legislation, in legislation extending to England and Wales and Northern Ireland with reciprocity from EU Member States and functioning statute book
- **Option 0.2 - Do Nothing** - make no amendments to retained EU law in this area to account for the effects of the UK leaving the EU.
- **Option 1** - Repeal the Protection Measures Regulation and associated domestic legislation in England & Wales and Northern Ireland – eliminating non-workable legislation from the statute book but also meaning protection measures issued by EU Member State courts would not be recognised without any special procedure being required and enforceable without the requirement for a declaration of enforceability in England & Wales or Northern Ireland.
- **Option 2** - Amend the Protection Measures Regulation and associated domestic legislation to ensure the deficiencies in the retained laws are corrected such that protection measures issued in the EU are recognised without any special procedure being required and enforceable without the requirement for a declaration of enforceability in England & Wales and Northern Ireland after EU exit.

The Government’s preferred option is option 2 as this best meets the policy objectives.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: N/A

Does implementation go beyond minimum EU requirements?				
Are any of these organisations in scope?	Micro Yes	Small	Medium	Large
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded:		Non-traded:	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister : David Gauke Date: 24/01/2019

Summary: Analysis & Evidence

Policy Option 1

Description: Repeal the Protection Measures Regulation legislation.

FULL ECONOMIC ASSESSMENT

Price Base Year n/a	PV Base Year n/a	Time Period Years n/a	Net Benefit (Present Value (PV)) (£m)		
			Low: n/a	High: n/a	Best Estimate: n/a

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	n/a	n/a	n/a	n/a
High	n/a		n/a	n/a
Best Estimate	n/a		n/a	n/a

Description and scale of key monetised costs by 'main affected groups'				
None				
Other key non-monetised costs by 'main affected groups'				
<u>Baseline: Option 0.1 - Static acquis:</u>				
If civil protection measures issued in the EU are not enforceable within the UK this could cause distress or put vulnerable people at risk. The impact of this cannot be measured, as we do not centrally collect distinct data on applications for, or enforcement of, civil protection measures. However, consultation with key family law stakeholders and with leading family law practitioners suggested that the use has been very limited, with minimal reliance upon the Protection Measures Regulation in England and Wales. Northern Ireland consider they have likely had none. Therefore, it is believed that the number of individuals impacted will be minimal.				
<u>Baseline: Option 0.2 - Do nothing:</u>				
There would only be negligible costs because removing non-functioning legislation from the statute book would provide no less protection to vulnerable persons than leaving it in place as under the 'do nothing' option.				
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	n/a	n/a	n/a	n/a
High	n/a		n/a	n/a
Best Estimate	n/a		n/a	n/a
Description and scale of key monetised benefits by 'main affected groups'				
None				
Other key non-monetised benefits by 'main affected groups'				
<u>Baseline: Option 0.1 - Static acquis:</u>				
None				
<u>Baselines Option 0.2 - Do nothing:</u>				
Removing the non-functional legislation would make British legislation more transparent and easier to understand. This would create greater legal certainty and enhances the reputation of English law.				
Key assumptions/sensitivities/risks			Discount rate (%)	
None				

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m
Costs: n/a	Benefits: n/a	Net: n/a	n/a

Summary: Analysis & Evidence

Policy Option 2

Description: Civil Protection Measures legislation are brought into domestic legislation and amended.

FULL ECONOMIC ASSESSMENT

Price Base Year n/a	PV Base Year n/a	Time Period Years n/a	Net Benefit (Present Value (PV)) (£m)		
			Low: n/a	High: n/a	Best Estimate: n/a

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	n/a	n/a	n/a	n/a
High	n/a		n/a	n/a
Best Estimate	n/a		n/a	n/a

Description and scale of key monetised costs by 'main affected groups'				
None				
Other key non-monetised costs by 'main affected groups'				
Baseline: Option 0.1 – Static acquis & Option 0.2 – Do nothing: There would only be negligible costs because there will be a clear framework for protection measures issued in the EU to be recognised and enforced in the UK after EU Exit.				
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	n/a	n/a	n/a	n/a
High	n/a		n/a	n/a
Best Estimate	n/a		n/a	n/a
Description and scale of key monetised benefits by 'main affected groups'				
None				
Other key non-monetised benefits by 'main affected groups'				
Option 0.1 - Static acquis: None Baseline: Option 0.2 - Do nothing: Vulnerable people would be protected in England & Wales and Northern Ireland by the recognition and enforceability of civil protection measures issued by EU Member State courts. In addition, the reputation of the law of England & Wales and Northern Ireland as being effective in protecting vulnerable people would be maintained.				
Key assumptions/sensitivities/risks				Discount rate(%)
None				

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m
Costs: n/a	Benefits: n/a	Net: n/a	
			n/a

Evidence Base (for summary sheets)

A. Background

1. Regulation (EU) 606/2013 (the Protection Measures Regulation) provides a framework for the mutual recognition of “protection measures” across the EU (except Denmark). “Protection measures” are civil orders which impose certain restrictions on a person with a view to protecting another person, when the latter person’s physical or psychological integrity may be at risk. Under the Protection Measures Regulation, protection measures made in one EU Member State must be recognised without any special procedure being required and enforceable without the requirement for a declaration of enforceability in another EU Member State.
2. Under the EU Withdrawal Act (the ‘Withdrawal Act’), the Protection Measures Regulation and the associated primary and secondary legislation that give legislative effect to the Protection Measures Regulation will be retained as domestic law upon the UK’s exit from the EU (‘retained EU law’). The Withdrawal Act provides a correcting power for Ministers to make regulations to deal with ‘deficiencies’ in retained EU law.
3. The use of such a power may be necessary because the Protection Measures Regulation, in its present form, is drafted so as to apply only to EU Member States and will not apply in the UK following Exit from the EU. This would mean that the retained Protection Measures Regulation would not be functional in the United Kingdom following EU Exit.
4. The Protection Measures Regulation is rarely, if ever, relied upon. There is no published data around its use that we are aware of while consultation with key family law stakeholders suggests only minimal reliance upon the Protection Measures Regulation. Nevertheless, it is a priority for the Government to ensure that vulnerable people, such as victims of domestic abuse, are protected.

B. Policy Rationale and Objectives

5. The conventional economic rationales for government intervention are based on efficiency and equity arguments. The government may consider intervening if there are failures in the way markets operate (e.g., monopolies overcharging consumers) or where there are failures with existing government interventions (e.g., waste generated by misdirected rules). The proposed new interventions should avoid creating a further set of disproportionate costs and distortions. The government may also intervene for equity (fairness) and re-distributional reasons (e.g., to reallocate goods and services to the more disadvantaged groups in society).
6. The rationale for intervention for the options assessed in this Impact Assessment (IA) is both equity and efficiency: that vulnerable people and victims of abuse deserve the protection of the law, and to reduce legal uncertainty regarding the civil protection measures.
7. The associated policy objectives are to ensure that vulnerable persons who are being protected by a civil protection measure issued by an EU Member State will continue to be protected by that protection measure should they travel to England & Wales or Northern Ireland. An associated objective is to maintain the reputation of the law of England & Wales and Northern Ireland as being effective in providing protection to vulnerable people.

C. Affected Stakeholder Groups, Organisations and Sectors

8. The groups most likely to be affected by the options in this IA are as follows:
 - Vulnerable persons who are being protected by a protection measure issued in the EU who reside in (or wish to travel to) England and Wales and Northern Ireland
 - The providers of legal services
 - UK courts

D. Description of Options Considered

9. In order to meet the policy objectives, the following options are assessed in this IA:

- **Option 0.1 - Static acquis:** the pre- EU exit application of the Protection Measures Regulation, in legislation extending to England and Wales and Northern Ireland with reciprocity from EU Member States and functioning statute book.
- **Option 0.2 - Do Nothing:** make no amendments to legislation in this area to account for the effects of the UK leaving the EU.
- **Option 1:** Repeal the Protection Measures Regulation and associated legislation - eliminating non-workable legislation from the statute book.
- **Option 2:** Amend the Protection Measures Regulation and associated legislation to ensure the deficiencies in the retained laws are corrected such that protection measures issued in the EU are recognised without any special procedure being required and enforceable without the requirement for a declaration of enforceability in England & Wales and Northern Ireland after EU exit.

10. The Government's preferred option is option 2 as it best meets the policy objectives.

Option 0.1: Static acquis (current arrangements)

11. This option is the status quo – this reflects how, pre-EU exit, the Protection Measures Regulation functions in the UK.

Option 0.2: Do nothing (do not legislate)

12. This option would result in the UK retaining the Protection Measures Regulation legislation and associated domestic legislation, without addressing EU Exit-related deficiencies. The legislation as it is currently drafted means that it only applies to EU Member States and, as such, it would not be functional in England & Wales and Northern Ireland after EU Exit. Protection measures issued by courts in EU Member States would not be recognised without any special procedure being required and enforceable without the requirement for a declaration of enforceability in England & Wales and Northern Ireland. Legislation would remain on the statute book that would not be operational.

13.

Option 1: Repeal the Protection Measures Regulation and associated domestic legislation

14. This option would remove non-functional legislation on the statute book. Eliminating non-workable legislation from the statute book would mean that protection measures issued by EU Member State courts would not be recognised without any special procedure being required and enforceable without the requirement for a declaration of enforceability in England & Wales and Northern Ireland post EU Exit.

Option 2: Protection Measures Regulation and associated legislation are brought into domestic legislation and amended

15. As Protection Measures Regulation legislation does not require a negotiated agreement, under this option the Protection Measures Regulation would be incorporated into domestic law in England & Wales and Northern Ireland and non-functional legislation fixed using the correcting power.

16. Under this option the Protection Measures Regulation, namely Regulation (EU) 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters, as well as certain references in existing domestic legislation, would be amended to:

- (a) ensure the deficiencies in the retained laws are corrected so that protection measures issued by EU Member State courts are recognised without any special procedure being required and enforceable without the requirement for a declaration of enforceability in England & Wales and Northern Ireland post EU exit; and

- (b) prevent civil courts in England & Wales and Northern Ireland issuing certificates for recognition of protection measure in EU Member States post EU exit.

E. Cost and Benefit Analysis

17. This IA follows the procedures and criteria set out in the IA Guidance and is consistent with the HM Treasury Green Book.
18. Where possible, this IA identifies both monetised and non-monetised impacts on individuals, groups and businesses in England, Wales and Northern Ireland with the aim of understanding what the overall impact on society might be from the options under consideration. As the 'doing nothing' option would be being compared with itself, its costs and benefits are necessarily zero as is its Net Present Value (NPV).
19. IAs place a strong focus on the monetisation of costs and benefits. There are often, however, important impacts that cannot sensibly be monetised. These might be impacts on certain groups of society or some data privacy impacts, positive or negative. Impacts in this IA are therefore interpreted broadly, to include both monetisable and non-monetisable costs and benefits, with due weight given to those that are non-monetisable.
20. However, in this case, as there are no measures of emotional or physical suffering or of legal uncertainty, all costs and benefits in this IA are non-monetisable in nature.
21. This cost benefit analysis section will first compare the two options against the Option 0.2/Do nothing baseline, before comparing the two options against Option 0.1/Static Acquis baseline which in essence reflects the current arrangements pre- EU Exit.

Cost and benefit analysis, relative to Option 0.2/Do nothing

Option 1: Repeal the Protection Measures Regulation and associated legislation

Costs of Option 1

Vulnerable persons who are being protected by a protection measure issued in the EU who reside in (or wish to travel to) England and Wales and Northern Ireland:

22. Under this option, there will be negligible costs because removing non-functioning legislation from the statute book would provide no less protection to vulnerable persons than leaving it in place under the 'do nothing' option.

Benefits of Option 1

Vulnerable persons who are being protected by a protection measure issued in the EU who reside in (or wish to travel to) England and Wales and Northern Ireland, the providers of legal services, UK courts

23. Removing the non-functional legislation would make British legislation more transparent and easier to understand. This would create greater legal certainty and enhance the reputation of the law of England and Wales and Northern Ireland.

Option 2: Protection Measures Regulation and associated legislation are brought amended

Costs of Option 2

Vulnerable persons who are being protected by a protection measure issued in the EU who reside in (or wish to travel to) England and Wales and Northern Ireland, the providers of legal services, courts in England and Wales and Northern Ireland:

24. Under this option, there will be negligible costs because there will be a clear framework for protection measures issued in the EU to be recognised without any special procedure being required and enforceable without the requirement for a declaration of enforceability in England & Wales and Northern Ireland after EU exit.

Benefits of Option 2

Vulnerable persons who are being protected by a protection measure issued in the EU who reside in (or wish to travel to) England and Wales and Northern Ireland:

25. Vulnerable people would be protected in England & Wales and Northern Ireland by the recognition and enforceability of civil protection measures issued in the EU.

Cost and benefit analysis, relative to Option 0.1/Static acquis

Option 1: Repeal the Protection Measures Regulation and associated legislation

Costs of Option 1

Vulnerable persons who are being protected by a protection measure issued in the EU who reside in (or wish to travel to) England and Wales and Northern Ireland:

26. If civil protection measures issued in the EU are not enforceable within the UK this could cause distress or put vulnerable people at risk. The impact of this cannot be measured, as we do not centrally collect distinct data on applications for, or enforcement of, civil protection measures. The same is true in Northern Ireland. However, consultation with key family law stakeholders and with leading family law practitioners suggested that the use has been very limited, with minimal reliance upon the Protection Measures Regulation in England and Wales. Northern Ireland consider they have likely had none. Therefore, it is believed that the number of individuals impacted will be minimal.

Benefits of Option 1

Vulnerable persons who are being protected by a protection measure issued in the EU who reside in (or wish to travel to) England and Wales and Northern Ireland, the providers of legal services, courts in England and Wales and Northern Ireland

27. None

Option 2: Protection Measures Regulation and associated legislation are brought into domestic legislation and amended

Costs of Option 2

Vulnerable persons who are being protected by a protection measure issued in the EU who reside in (or wish to travel to) England and Wales and Northern Ireland, the providers of legal services, UK courts:

28. Under this option, there will be negligible costs because there will be a clear framework for protection measures issued in the EU to be recognised without any special procedure being required and enforceable without the requirement for a declaration of enforceability in England & Wales and Northern Ireland after EU exit.

Benefits of Option 2

Vulnerable persons who are being protected by a protection measure issued in the EU who reside in (or wish to travel to) England and Wales and Northern Ireland:

29. None.

F. Wider Impacts

30. This instrument does not amend, repeal or revoke any part of the Equality Acts 2006 or 2010 or subordinate legislation made under those Acts.

31. Due regard has been taken on the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.

G. Enforcement and Implementation

32. Following the UK's exit from the EU, the amendments made to the Protection Measures Regulation would be enforceable by the courts in England & Wales and Northern Ireland.

H. Monitoring and Evaluation

33. As this instrument is made under the EU (Withdrawal) Act 2018, no review is required.

I. Business Impact Target

34. This measure is out of scope of the Business Impact Target.