

## EQUALITY IMPACT ASSESSMENT - RESULTS

<b>Title of Policy</b>	The Mutual Recognition of Supervision Measures in the European Union (Scotland) Regulations 2014 ('the Regulations').
<b>Summary of aims and desired outcomes of Policy</b>	<p>The Regulations transpose into Scots law the requirements of Council Framework Decision <a href="#">2009/829/JHA</a> on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention.</p> <p>This Framework Decision or 'European Supervision Order' ('ESO') as it is known, is designed to increase the likelihood that EU nationals who are prosecuted in a different Member State, to which they normally reside, will be granted bail rather than remanded in custody.</p> <p>The Regulations therefore provide the framework to allow, in certain circumstances, an accused person to return home and be supervised there until their trial takes place in the Member State where the offence took place, in accordance with the provisions of the ESO.</p>
<b>Directorate: Division: team</b>	Justice Directorate: Criminal Justice Division: EU Implementation Team.

### Executive summary

The ESO offers a potential positive effect on the civil liberties and rights of the accused. No negative equality impacts for this policy have been identified.

The provisions in the Regulations will, to varying degrees, affect a small number of individuals who seek to use the ESO, from the accused and their legal

representatives, to Police Scotland, Scottish Prison Service, Crown Office and Procurator Fiscal Service (COPFS) and the Scottish Court Service (SCS). The core provisions in the Regulations stem from European Framework Decision 2009/829/JHA, itself shaped by extensive exchanges over numbers of years between Member States, justice organisations, legal representative bodies, NGOs and others with an interest at a European level, and influenced by a number of substantial and authoritative reviews such as from the UK House of Lords.

In Scotland, a Working Group of key organisations charged with delivering the supervision measures has used available evidence to formulate workable provisions in the Regulations to ensure compliance with the Framework Decision.

The provisions in the Regulations do not discriminate on the basis of age, disability, sex including pregnancy and maternity, gender reassignment, sexual orientation, race or religion and belief. The ESO applies equally to all EU Member State suspects who are awaiting trial in Scotland and all Scottish suspects awaiting trial in another EU Member State which has implemented these measures.

As the policy has been developed there has been close consultation with criminal justice partners and key stakeholders to assess the provisions against the Scottish Government's equality duty.

The Scottish Government's Justice Analytical Services has provided analytical expertise to inform the EQIA process. This exercise enabled policy officials to identify relevant data and establish an accurate and informed context within which the provisions in the Regulations will operate and against which equality matters can be assessed.

The EQIA identified no negative potential impacts of the provisions which will enable the transfer of a pre-trial non-custodial supervision measure (such as bail) from the Member State where a non-resident is suspected to have committed an offence, to the Member State where they are normally resident.

## **Background**

The ESO is designed to increase the likelihood that EU nationals who are prosecuted in a different Member State will be granted bail rather than remanded in custody. This is not only to counter the presumption of them being deemed a flight risk and avoid the trial state bearing the financial cost of the detention, but also to avoid being cut off from family and friends, the effects of detention on their physical and mental health and the risk of being absent from and consequently losing employment.

It is in keeping with the Scottish Government's general policies of promoting human rights, in this case by helping to avoid or minimise the impacts of lengthy pre-trial detention on individuals with no community ties to the trial state, and placing people at the centre of the policy process in the way it will address inequalities in the consistency of how accused persons are treated across the EU.

The Regulations will deliver better outcomes for the diverse people of Scotland than is currently the case as the accused will benefit from having the option to return home and be supervised there until their trial takes place in the Member State where the offence took place. This will help avoid adverse impacts associated with lengthy pre-trial detention on individuals with no community ties to the trial state mentioned above.

The ESO offers the prospect of an accused person being able to continue with their normal home life, work or study rather than being held on remand or bailed abroad. It therefore offers a very positive effect on the civil liberties and rights of the accused.

The policy objective of promoting the use of non-custodial measures in criminal proceedings will also see a reduction in the number of accused persons remanded in custody.

Negative issues arising from the increasing use of remand (Scottish Government Justice Analytical Services<sup>1</sup>) include:

- Remand costs - it is not the most cost effective way to monitor accused prior to trial or sentence
- Increased use of remand contributes to prison overcrowding
- Remand does not help reduce offending in the long term as remand prisoners do not receive any rehabilitation programmes, education or work in prison
- Remand is associated with an increased risk of suicide and mental health problems among prisoners
- Human rights violations are more likely to occur during pre-trial detention.

This policy directly contributes to the following National Outcomes:

- We live our lives safe from crime, disorder and danger
- Our public services are high quality, continually improving, efficient and responsive to local people's needs.
- We have tackled the significant inequalities in Scottish society.

## **The Scope of the EQIA**

The Scottish Government has examined a variety of sources in order to ascertain the impact of the policy behind the Regulations on the seven protected characteristics, and on equality matters in general.

This EQIA assesses the policy against the three needs of the public sector equality duty, namely to:

- eliminate discrimination, harassment and victimisation;
- advance equality of opportunity; and
- foster good relations.

It does so in respect of the seven protected characteristics of age, disability, sex (including pregnancy and maternity), gender reassignment, sexual orientation, race and religion and belief

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<sup>1</sup> Internal analysis of prisons data

We have consulted Scottish Government Justice Analytical Services to help understand the impacts of the policy and help identify, collate, weigh up and analyse available evidence on the Framework Decision establishing the ESO and related considerations.

Policy for the Scottish context has been developed through close engagement with an operational Working Group on the ESO, consisting of representatives of COPFS, SCS and Police Scotland. These represent the organisations who will be charged with delivering the supervision measures to ensure compliance with the European obligations. It has also been informed by close cooperation and sharing of data and evidence sources with the UK Administrations and other EU Member States such as the Republic of Ireland.

We believe that a proportionate approach to considering the equality implications of the policy is to ensure the key equality organisations are included in our list of stakeholders receiving copies of the Regulations and accompanying documents, including the draft EQIA, in order to make their representations known on the impact of the proposals.

The ESO has been welcomed as a means of alleviating serious problems with EU citizens being denied bail for long periods in other EU Member States. Issues relating to pre-trial detention were highlighted in a [report](#) by Fair Trials International in September 2012 that proposed that Member States should make full use of the ESO.

The ESO was also subject of a detailed [report](#) with evidence by the House of Lords European Union Committee in 2007. The Lords report concluded that "The ESO...is a welcome measure. The Commission's proposal addresses an issue affecting the liberty of the individual".

The Rt Hon Sir Scott Baker's independent [review](#) of extradition laws, published in October 2011, highlighted that the ESO "should go some way to address the issue of lengthy pre-trial detention of non-resident aliens within the European Union".

Recital (16) of the preamble to the Framework Decision states: "Nothing in this Framework Decision should be interpreted as prohibiting refusal to recognise a decision on supervision measures if there are objective indications that it was imposed to punish a person because of his or her sex, race, religion, ethnic origin, nationality, language, political convictions or sexual orientation or that this person might be disadvantaged for one of these reasons."

Furthermore, Article 5 of the Framework Decision states: "This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union." Those enshrined rights and principles include those found in the [Charter of Fundamental Rights of the European Union](#). Article 21 of the Charter sets out a prohibition on discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.

## Key Findings

In assessing the impact of the Scottish Government's policy to implement the ESO, we judge the effects of the policy will have no negative equalities impacts.

The policies proposed affect people of all different ages, disability, gender, sexual orientation, religion and belief equally.

We have found no adverse equalities impacts in respect of the seven protected characteristics. We believe it will address a number of negative issues arising from the increasing use of remand.

Those organisations who manage criminal proceedings and the current process for bail in Scotland, including SCS, COPFS and Police Scotland, already promote the need to:

- eliminate unlawful discrimination, harassment, victimisation and other prohibited conduct;
- advance equality of opportunity between people who share a relevant protected characteristic and those who do not; and
- foster good relations between people who share a protected characteristic and those who do not.

We believe that none of the provisions in the legislation or the policy intent that supports it should imply any direct or indirect discrimination against any particular section of society, rather it seeks to make provision for all accused persons to benefit from a less coercive supervision measure (being released on bail pending trial instead of being held in custody) consistently across all EU Member States.

The main beneficiaries of the policy will be vulnerable non-resident defendants who would otherwise have been stopped from going back to their normal country of residence. Instead, these individuals will have the opportunity to return home and be supervised there until their trial takes place in the requesting Member State where the offence is alleged.

As well as the accused, the policy will also affect their legal representatives and the organisations in Scotland responsible for the issuing, executing and monitoring the supervision measures, namely the Crown, the courts and the police. The prison service will also be affected in terms of an expected reduction in the number of prisoners held on remand while awaiting trial.

We expect this Regulations to impact on no more than 14 individuals (7 incoming ESO's and 7 outgoing ESO's) in any one year, therefore we do not anticipate any secondary impacts directly or indirectly resulting in individuals being employed, a change in staffing levels, terms and conditions, employer or location within these organisations, or any change in the size of the budget, or an impact on resources, potentially impacting on individuals.

Those who are not mentioned above are not expected to be impacted at all by the policy in equalities terms.

In terms of assessing the policy against the public sector equality duty, transposition of the Framework Directive will help eliminate any potential discrimination, harassment and victimisation for Scots that may otherwise have been subject to pre-trial detention or a long-term non-custodial supervision measure in (for them) a foreign environment.

The policy will help advance equality of opportunity for non-resident defendants from all EU Member States, including those from Scotland, in terms of removing the comparative disadvantage *viv-a-vis* residents at the pre-trial stage.

Implementation will also help foster good relations between Scots working in and with Scottish justice organisations and other European Member States and help foster cross-border cooperation and understanding.

### **Recommendations and Conclusion**

The EQIA identified no negative impacts for the provisions in the Regulations which are considered to deliver better outcomes for all who are affected.

The task of monitoring the effect of the regulations would devolve on those who ensure the provision of these services – the police, the Crown and the courts.

SCS, COPFS and Police Scotland are all subject to both general and specific duties under the Equality Act 2010. The general duties require public bodies to have due regard to the need to:

- eliminate unlawful discrimination, harassment, victimisation and other prohibited conduct;
- advance equality of opportunity between people who share a relevant protected characteristic and those who do not; and
- foster good relations between people who share a protected characteristic and those who do not.

The equalities duties and reporting and evaluation outcomes for all bodies involved in implementing the ESO are published online.