

**INFORMAL DISCUSSION PAPER ONLY: THIS IS NOT A STATEMENT OF GOVERNMENT POLICY**

**Regulation of the European Parliament and of the Council on mutual recognition of protection measures in civil matters**

**Discussion Paper**

**Introduction**

We are inviting views on a proposal for a European Regulation on mutual recognition of protection measures in civil matters. This discussion paper is being issued by the Ministry of Justice: the terms of this paper have been agreed with Scotland and Northern Ireland. The draft Regulation is one of the proposals included in the European Commission's package on victims which was published on 18 May.

The Regulation aims to ensure that a protection measure (for example a non-molestation order) provided to a person in one Member State is recognised and maintained when that person travels or moves to another Member State. It is hoped that this Regulation will provide a quick and efficient mechanism which will avoid the person requiring protection having to go through time consuming court procedures in the Member State of recognition, or give evidence on the same matters a second time in order to get equivalent protection in that State.

This Regulation covering "civil matters" follows on from a Member State initiative put forward by Spain on the European Protection Order which has in principle been limited to cover "criminal matters" only. The instruments are intended to complement each other so that as many orders as possible are covered despite the differences in systems between Member States.

A standardised certificate issued in the Member State of origin will set out all the information relevant for the recognition. The certificate will be provided to the relevant authorities of the new Member State where the person needing protection is moving or travelling to and that Member State will recognise and where applicable, enforce the protection that was granted in the original Member State.

In accordance with Protocol 21 following publication of an EU legislative measure in the area of Justice and Home Affairs the United Kingdom has three months to decide whether or not to "opt in" to the proposal. If the UK does not exercise its opt in within the first three months it can opt in after the measure has been adopted (subject to the agreement of the Council), but in that situation the United Kingdom would have no voting rights in the negotiations.

A decision will need to be made as to whether the UK opts in to the new civil Regulation. Your views will help us gather evidence which will assist in the negotiation process and in making our decision on whether or not to opt in.

The proposed Regulation and Commission Explanatory Memorandum can be found at Annex A.

**The text will be the subject of negotiations and will change as negotiations proceed.**

**A brief synopsis of the draft Regulation is below.**

## **Chapter I**

This chapter sets out the scope (Article 1), definitions (Article 2) and jurisdiction (Article 3). It states that the Regulation will apply to protection measures taken in “civil matters”. The type of authority which issued the original protection measure in the Member State of origin is not relevant to the application of the Regulation (for example some Member States may not rely on a court to issues such measures, but may rely on an administrative authority).

Under this Regulation, the Member State where the person’s “physical and/or psychological integrity” is at risk will have jurisdiction.

In Chapter I definitions are provided for key terms referred to in the Regulation.

## **Chapter II**

This chapter focuses on the recognition and enforcement of protection measures. The Regulation requires automatic recognition of a protection measure taken by the Member State that issues the original protection order (the Member State of origin) in another Member State (the Member State of recognition) (Article 4). If the protection measure is not known to the law of the Member State of recognition then the relevant authority should adapt it to one known under its national law (Article 8).

Article 9 ensures that the protection measure shall be enforced in accordance with the national law of the Member State of recognition.

The certificate that must be used is a standard form (attached as an Annex to the Regulation) (Article 5). Because some details of a measure of protection may not easily “translate” to another Member State Article 5(2) requires the measure to be described on a way that enables it to be recognised (and if necessary, adapted or enforced) in the Member State of recognition (so for example, an exclusion zone may be described in the certificate as being a set distance from where the applicant lives, as opposed to a specific address). There is no appeal against the issue of the certificate (Article 7).

In this chapter the Regulation also sets out safeguards for the fundamental rights of the person causing the risk (Articles 10 and 12) and it requires both the Member States of origin and recognition to keep the protected person and the person causing risk informed at key points during the process (Article 13). This includes the issuing of a protection measure in the Member State of origin, the recognition of it in the Member State of recognition and the withdrawal of it in the Member State of origin.

The authorities in the Member State of recognition may not review the substance of the protection measure (for example the merits of the decision which led to the issuing of it in the Member State of origin) (Article 11) nor may they refuse to recognise on the basis that their domestic law would not have allowed such a measure to be made based on the same facts (Article 12(4)).

## **Chapter III**

This chapter includes provision about entitlement to legal aid in the Member State of recognition and also requirements in relation to translation.

## **Chapter IV**

This chapter sets out general and final provisions including an article on entry into force which states that the Regulation will be binding in its entirety and directly applicable in all Member States. It will apply 12 months after its entry into force. It will apply to protection measures taken on the day of entry into force onwards, even if the application preceded that date (Article 17).

### **Questionnaire**

**The following list of questions is for guidance only. It is not necessary to answer each one of them or to restrict your response to them.**

- 1) Do you think that the combination of scope along with having an open list of protection measures is the right approach to ensure as many orders as possible are covered?
- 2) Do you think that the draft encompasses all relevant protection measures in UK jurisdictions?
- 3) In the Commission's explanation of Article 5 (page 7) it states that "it will be up to the party who wishes to invoke the measure in another Member State to provide the competent authorities of that Member State with the issued certificate". Do you believe this is the right approach? How do you think it will work in practice?
- 4) In the Commission's explanation of Article 12 (page 8) it states that there is only one ground for refusal. The Member State of recognition may, on application by the person causing risk, refuse the recognition of the protection measure if it is irreconcilable with a decision in that Member State. It is also "the responsibility of the person causing the risk to apply" for the withdrawal or suspension of a protection measure. What is your view on this approach? Do you think it will work well in practice? Do you think that further safeguards may be needed to ensure action is not taken on a withdrawn or suspended order?
- 5) In the Commission's explanation of Article 9 (page 7) it states that "under national law very few protection measures require the competent authorities to actively intervene to give effect to them". In your experience in the UK, is this accurate?
- 6) The text sets out that a standard certificate should be used (in the Annex attached to the Regulation). Do you see any problems with using this certificate?
- 7) What are your views on the requirements of the Member State of origin and the Member State of recognition and/or enforcement to notify the protected person and person causing risk of the matters (set out in Article 13)? How do you believe this could be achieved in practice?
- 8) What do you think the effects of non compliance with the notification requirements should be?

- 9) Do you consider any further provisions are needed to safeguard the rights of the person subject to the EPO as well as the rights of the person obtaining the EPO?
- 10) How would the police, the prosecuting authorities and any other party deal effectively with a breach of the EPO in the UK?
- 11) Given that there are two separate EPO instruments how do you envisage them working together? What do you think are the risks and how might these be addressed?
- 12) Are there any issues arising about the recognition of orders obtained in one part of the UK in another part of the UK?
- 13) Do you think that the UK should opt in to this proposal?

We would be grateful for any other comments/views you would like to share.

Thank you for taking the time to contribute to discussion on this draft Regulation.

The Ministry of Justice, Better Trials Unit, is responsible for negotiating this Regulation on behalf of the UK.

Please send any responses by **Friday 8 July 2011** to Rose Lamb ([Rose.Lamb@justice.gsi.gov.uk](mailto:Rose.Lamb@justice.gsi.gov.uk)) and Vanessa Watling ([Vanessa.Watling@justice.gsi.gov.uk](mailto:Vanessa.Watling@justice.gsi.gov.uk))