POLICY NOTE

THE CIVIL JURISDICTION AND JUDGMENTS (PROTECTION MEASURES) (SCOTLAND) REGULATIONS 2014

SSI 2014/333

The above instrument was made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 ("the 1972 Act") and all other powers enabling them to do so. The instrument is subject to the negative procedure.

Policy Objectives

These Regulations make provision to facilitate the application in Scotland of Regulation (EU) 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 EU Regulation").[1]

Article 22 of the EU Regulation provides that it applies to protection measures ordered on or after 11 January 2015.

The EU Regulation is directly applicable in Scotland. Therefore, the regulations made under section 2(2) of the 1972 Act only make provision insofar as this is needed to facilitate the application of the EU Regulation.

The EU Regulation is part of an EU legislative package which aims to strengthen the rights of victims by recognising civil protection measures across the EU. It is designed to complement Directive 2011/99/EU on the European Protection Order, which covers protection in criminal measures. Draft European Protection Order (Scotland) Regulations 2014 to implement Directive 2011/99/EU are due to be laid before the Scottish Parliament on 26 November 2014.

The EU Regulation provides for recognition across the EU[2] of civil protection measures. This recognition only lasts for 12 months, given the terms of Article 4(3).

The UK Government, supported by the Scottish Government, decided that the United Kingdom should take part in the adoption and application of the Protection Measures Regulation: recital 40 of the preamble to the EU Regulation refers. The Scottish Government took this decision given that the EU Regulation is in line with the work being undertaken by the Government to tackle domestic abuse generally. The Scottish Government does not expect, however, that the EU Regulation will have a major effect on domestic abuse.

The types of measures covered are defined in Article 3 of the EU Regulation. This definition is:

" ' protection measure' means any decision, whatever it may be called, ordered by the issuing authority of the Member State of origin in accordance with its national law and imposing one

[1] EU Regulation 606/2013 is at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:181:0004:0012:en:PDF

[2] Other than Denmark, which is not taking part. Please see recital 41 of the preamble to the EU Regulation.

or more of the following obligations on the person causing the risk with a view to protecting another person, when the latter person's physical or psychological integrity may be at risk:

(a) a prohibition or regulation on entering the place where the protected person resides, works, or regularly visits or stays:

(b) a prohibition or regulation of contact, in any form, with the protected person, including by telephone, electronic or ordinary mail, fax or any other means;

(c) a prohibition or regulation on approaching the protected person closer than a prescribed distance."

The Scottish Government considers that this definition could, for example, cover interdicts and civil non-harassment orders.

Under Article 5 of the EU Regulation, a protected person who has been granted a protective order may then apply for a certificate so that the measure is recognised across the EU. This certificate is contained in a multi-lingual standard form established by the European Commission Under Article 6, the certificate may only be granted where the person causing the risk has been given an opportunity to be heard in the domestic proceedings. Under Article 9, the certificate may be rectified or withdrawn if there is a clerical error or it was clearly wrongly granted. Under Article 14, a further certificate may be granted reflecting any suspension, limitation or withdrawal of the original protection measure. The European Commission has established standard multi-lingual forms for the purposes of Articles 5 and 14[3].

Regulation 3 of the Civil Jurisdiction and Judgments (Protection Measures) (Scotland) Regulations 2014 ("the 2014 Regulations") makes provision so that the Court of Session or the sheriff court in Scotland which ordered the protection measure have jurisdiction in relation to the issue of outgoing EU certificates.

The EU Regulation makes provision which has the effect that protection measures ordered in other Member States are recognised in Scotland for up to 12 months: Article 4 refers. This is directly applicable in Scotland and no implementing provision in domestic legislation is required.

Regulation 4 of the 2014 Regulations make provision so that the Court of Session or a sheriff court in Scotland have jurisdiction to enforce an incoming protection measure; adjust a factual element of an incoming protection measure; refuse to recognise or enforce an incoming protection measure; and suspend or withdraw the effects of recognition or enforcement under Articles 4, 11, 13 and 14 of the EU Regulation respectively.

Regulation 5 of the 2014 Regulations makes further provision to lay down that for the purposes of enforcing incoming protection measures, the Court of Session and the sheriff courts will have the same powers and may undertake the same procedure for enforcement as if the incoming protection measure were in the form of an interdict granted by a domestic court. This reflects that the type of prohibitions contained in the definition of "protection

[3] The multi-lingual forms established by the Commission are at http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1410275245533&uri=OJ:JOL_2014_263_R_0004

measure" in Article 3 of the EU Regulation are along similar lines to prohibitions that might be contained in interdicts granted by the Scottish courts.

Treating incoming protection measures as interdicts means that a person with a protection measure can apply to the court under section 1 of the Protection from Abuse (Scotland) Act 2001 for a power of arrest to be attached to it and/or apply to the court under section 3 of the Domestic Abuse (Scotland) Act 2011 for the measure to be declared a domestic abuse interdict.

Consultation

The UK Government and the Scottish Government met with interested parties in Scotland while the EU Regulation was still being negotiated at EU level. The general consensus of that meeting was that the United Kingdom should take part in the adoption and application of this Regulation. The Scottish Government has worked closely with the Scottish Court Service while preparing the 2014 Regulations. The Scottish Government also sent the Scottish Civil Justice Council a policy paper for its meeting on 29 September 2014 on potential Rules of Court as a result of the EU Regulation. Rules of Court are made by the Lord President of the Court of Session.

Impact Assessments

There is no obvious impact on business and so a Business and Regulatory Impact Assessment has not been prepared.

An Equality Impact Assessment is being prepared to cover this EU Regulation and Directive 2011/99/EU. The main impact of the EU Regulation is expected to be around domestic abuse. The Scottish Government publishes statistics on domestic abuse interdicts recorded by the police[4]. These statistics show that incidents with a female victim and a male perpetrator represented 80% of all incidents of domestic abuse in 2012-13. Therefore, in relation to the Equality Act 2010 protected characteristic of sex, the EU Regulation and the 2014 Regulations will have particular benefits for women, given that most victims of domestic abuse are women. These benefits will be limited as the EU Regulation restricts recognition across the EU of civil protection measures to 12 months.

Financial Effects

No financial impact is expected on business. Financial impacts generally are expected to be low, given that it is not expected that there will be many cases arising under the EU Regulation.

Scottish Government
Justice Directorate
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[4] The 2012-13 statistics on Domestic Abuse Recorded by the Police in Scotland are at: http://www.scotland.gov.uk/Publications/2013/10/2411