

2014 No. 3300

CRIMINAL LAW, ENGLAND AND WALES

The Criminal Justice (European Protection Order) (England and Wales) Regulations 2014

<i>Made</i>	- - - -	<i>15th December 2014</i>
<i>Laid before Parliament</i>		<i>18th December 2014</i>
<i>Coming into force</i>	- -	<i>11th January 2015</i>

The Secretary of State, being a Minister designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to criminal justice(b), makes the following Regulations in exercise of the powers conferred by that section.

PART 1

General

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Criminal Justice (European Protection Order) (England and Wales) Regulations 2014 and come into force on 11th January 2015.

(2) These Regulations extend to England and Wales.

Interpretation – general

2.—(1) In these Regulations—

“central authority”, in relation to a member State other than the United Kingdom, means an authority designated by the State as a central authority for the purposes of the Directive;

“the central authority for England and Wales” means the Lord Chancellor;

“competent authority”, in relation to a member State other than the United Kingdom, means an authority designated by the State as a competent authority for the purposes of the Directive;

“the Directive” means Directive 2011/99/EU of the European Parliament and of the Council of 13th December 2011 on the European protection order(c);

“notify” means notify in writing (and “notification” is to be read accordingly).

(a) 1972 c. 68; section 2(2) was amended by section 27(1)(a) and (b) of the Legislative and Regulatory Reform Act 2006 (c. 51), and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).

(b) S.I. 2012/2752.

(c) OJ No. L 338, 21.12.2011, p. 2.

(2) References in these Regulations to the Crown Court, the High Court, the Court of Appeal or a magistrates' court include references to a judge of such a court or a justice of the peace and a judge or justice having powers to act in connection with proceedings before such a court.

PART 2

Making a European protection order in England and Wales: requests to other member States to recognise the order

Interpretation – Part 2

3.—(1) In this Part—

“European protection order” has the meaning given by regulation 4(9);

“protected person” means the individual who is the object of the protection given by a protection measure;

“protection measure” means a decision or order of a court in England and Wales when dealing with a criminal cause or matter, in which one or more of the following prohibitions or restrictions are placed on an individual—

- (a) a prohibition from entering certain localities, places or defined areas where the protected person resides or visits;
- (b) a prohibition or restriction of contact with the protected person by any means (including by telephone, post, facsimile transmission or electronic mail);
- (c) a prohibition or restriction preventing the individual from approaching the protected person whether at all or to within a particular distance;

“relevant court”, in relation to a protection measure, means—

- (a) if the protection measure was made in the Crown Court and the request for the making of a European protection order is made at the same hearing at which the protection measure is made, the Crown Court; or
- (b) in any other case, a magistrates' court;

“specified information” means the information required by Article 7 of the Directive to be included on the form set out in Annex I to the Directive, except for any information relating to Framework Decision 2008/947/JHA of 27th November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions^(a).

(2) References in this Part to “the executing State” are to be construed in accordance with regulation 4(5).

Power of a court to make a European protection order

4.—(1) This regulation applies where a magistrates' court, the Crown Court, the High Court or the Court of Appeal has made a protection measure.

(2) A relevant court may make an order under this regulation where the following conditions are met.

(3) The first condition is that the protected person requests the making of an order under this regulation in accordance with regulation 5.

(4) The second condition is that the protection measure has not expired.

(a) OJ No. L 337, 16.12.2008, p.102.

(5) The third condition is that the court is satisfied that the protected person has decided to reside or stay or is already residing or staying in a member State other than the United Kingdom (“the executing State”).

(6) When deciding whether to make an order under this regulation, the relevant court must take into account—

- (a) the length of the period or periods that the protected person intends to reside or stay in the executing State;
- (b) the seriousness of the need for protection of the protected person while residing or staying in the executing State;
- (c) such other matters as it considers appropriate.

(7) An order under this regulation may not have effect for a period longer than the period for which the protection measure has effect.

(8) An order under this regulation may not contain a prohibition or restriction of a kind not mentioned in the definition of “protection measure” in regulation 3(1).

(9) An order under this regulation is referred to in the rest of this Part as a “European protection order”.

Applications for a European protection order

5.—(1) A request for a European protection order may be made to—

- (a) a relevant court; or
- (b) the competent authority of the executing State.

(2) Where a request for a European protection order is made to the competent authority of the executing State and transferred by that State to the central authority for England and Wales, it must be treated for the purposes of this regulation as if it were a request made to a magistrates’ court under paragraph (1)(a).

(3) A request under paragraph (1) may be made by the protected person or by a guardian or other representative on the protected person’s behalf.

Form and content of the European protection order

6. A European protection order must be in the form set out in Annex 1 to the Directive and contain the specified information.

Duty to inform a protected person of the possibility of a European protection order

7. Where a magistrates’ court, the Crown Court, the High Court or the Court of Appeal has made a protection measure, it must ensure that the protected person (or, where appropriate, the guardian or representative of the protected person) is—

- (a) informed in an appropriate way of the possibility to request a European protection order if the person decides to reside or stay in another member State and of the basic conditions for making such a request; and
- (b) advised to submit a request for a European protection order before leaving the United Kingdom.

Duty to inform a protected person about remedies if a request is refused

8. If the relevant court refuses to make a European protection order it must inform the protected person (or, where appropriate, the guardian or representative of the protected person) of any applicable legal remedy that may be available against the decision.

Notifying the executing State of the European protection order

9.—(1) The court which makes a European protection order must notify the competent authority of the executing State of the European protection order by giving the documents specified in paragraph (2) to that authority.

(2) The documents are—

- (a) a copy of the form containing the European protection order; and
- (b) a copy of the form translated into—
 - (i) the official language, or one of the official languages, of the executing State; or
 - (ii) an official language of the European Union if the executing State has declared under Article 17 of the Directive that it will accept a translation in that language.

Renewing, modifying or revoking a protection measure and related European protection order

10.—(1) This regulation applies where a magistrates' court, the Crown Court, the High Court or the Court of Appeal makes a decision renewing, modifying or revoking a protection measure in relation to which a European protection order was made.

(2) The revocation of the protection measure has the effect of revoking the European protection order.

(3) Subject to paragraph (4), if the court modifies one or more of the prohibitions or restrictions placed on an individual under a protection measure, the court must—

- (a) amend the European protection order to the like extent; and
- (b) complete the form set out in Annex I to the Directive with the specified information.

(4) The modified European protection order may not contain a prohibition or restriction of a kind not mentioned within the definition of “protection measure” in regulation 3(1).

(5) If the court renews a protection measure it—

- (a) may amend the European protection order; and
- (b) where it does so, must complete the form set out in Annex I to the Directive with the specified information.

(6) The court must, without delay, inform the competent authority of the executing State—

- (a) if paragraph (2) applies, that the European protection order is revoked;
- (b) if paragraph (3) or (5) applies, of the decision modifying or renewing the protection measure.

(7) Where the court modifies or renews the European protection order, it must send to the competent authority of the executing State—

- (a) the modified or renewed order; and
- (b) where necessary, a copy of the form translated in accordance with regulation 9(2)(b).

PART 3

Recognition in England and Wales of a European protection order made in a member State other than the United Kingdom

Interpretation – Part 3 and the Schedule

11.—(1) In this Part and in the Schedule—

“European protection order” has the meaning given by Article 2 of the Directive, where the decision taken was one taken by a competent authority of a member State other than the United Kingdom;

“person causing danger” has the meaning given by Article 2 of the Directive;

“protected person” means the individual who is the object of the protection resulting from a protection measure adopted by a competent authority of a member State other than the United Kingdom;

“protection measure”, except as mentioned in regulation 12(6)(b) and (7), has the meaning given by Article 2 of the Directive.

(2) References in this Part to “the issuing State” are to be construed in accordance with regulation 12(1).

Requests from other member States to recognise a European protection order

12.—(1) This regulation applies if a competent authority of a member State other than the United Kingdom (“the issuing State”)—

- (a) makes a European protection order; and
- (b) makes a request for the recognition of the European protection order under the Directive.

(2) The competent authority of the issuing State makes a “request for the recognition of the European protection order under the Directive” if it or the central authority of the issuing State gives to the central authority for England and Wales the following documents—

- (a) the European protection order or a copy of it, in the form set out in Annex I to the Directive; and
- (b) if the form is not in English, a copy of the form translated into English.

(3) The central authority for England and Wales must give those documents to a magistrates’ court.

(4) The magistrates’ court must decide, without undue delay, whether any of the grounds for refusal to give effect to a European protection order in the Schedule apply.

(5) If the magistrates’ court decides that none of the grounds for refusal applies, it must give effect to the order under regulation 13.

(6) Subject to regulation 14, if the magistrates’ court decides that one or more of the grounds for refusal in the Schedule applies, it may refuse to recognise the European protection order and, where it does so, it must—

- (a) without undue delay, ensure that the competent authority of the issuing State and the protected person are informed that it has decided not to recognise the European protection order and of the grounds for doing so;
- (b) where appropriate, ensure that the protected person is informed of the possibility of applying for a protection measure under the law of England and Wales;
- (c) ensure that the protected person is informed of any applicable legal remedy that may be available against the decision under the law of England and Wales.

(7) In paragraph (6)(b), “protection measure” is to be construed in accordance with regulation 3(1).

(8) Where a guardian or other representative is acting on the protected person’s behalf, references in paragraph (6) to the protected person are to be read instead as references to the guardian or other representative.

Giving effect in England and Wales to a European protection order

13.—(1) This regulation applies where a magistrates’ court is required under regulation 12 to give effect to a European protection order.

(2) The magistrates' court must give effect to the order by making a restraining order under section 5 of the Protection from Harassment Act 1997^(a), which has effect for the purposes of this regulation as if—

(a) for subsection (2) there were substituted—

“(2) The order may, for the purpose of protecting a protected person under the Criminal Justice (European Protection Order) (England and Wales) Regulations 2014 (“the 2014 Regulations”), prohibit or restrict a person causing danger from doing anything described in the order (subject to subsection (2A)).

(2A) The prohibitions or restrictions imposed on a person under subsection (2) must correspond as far as possible to those contained in the European protection order made by the competent authority of the issuing State.”;

(b) subsections (3A), (4) and (4A) were omitted; and

(c) after subsection (7) there were inserted—

“(8) In this section—

“European protection order”, “person causing danger” and “protected person” have the meanings given by regulation 11(1) of the 2014 Regulations;

“issuing State” is to be construed in accordance with regulation 12(1) of those Regulations.”.

Procedural requirements relating to the making of a restraining order

14.—(1) If the magistrates' court considers that the ground for refusal mentioned in paragraph 1(a) of the Schedule applies, it must, before taking a decision refusing to recognise the European protection order under regulation 12—

(a) without delay, notify the competent authority of the issuing State that the information provided is incomplete; and

(b) request that competent authority to provide the missing information, specifying a reasonable period for it do so.

(2) Where under paragraph (1)(b) the magistrates' court has specified a period within which the missing information must be provided, the decision whether or not to recognise the European protection order must be taken—

(a) where the missing information is received by the court within the specified period, without undue delay after its receipt;

(b) in any other case, without undue delay after the specified period ends.

(3) Where the magistrates' court has made a restraining order under regulation 13, it must ensure that the following are informed of the terms of the restraining order and the possible legal consequences of a breach of the restraining order—

(a) the person causing danger;

(b) the competent authority of the issuing State; and

(c) the protected person (or, where appropriate, the guardian or representative of the protected person).

(4) The court must not provide the person causing danger with the address or contact details of the protected person unless the disclosure of those details is necessary to enable the person causing danger to comply with the order.

(a) 1997 c. 40; section 5 was amended by sections 12(1) and 58 of, paragraph 43 of Schedule 10 and Schedule 11 to, the Domestic Violence Crime and Victims Act 2004 (c. 28); and by section 125(1) and (6) of the Serious Organised Crime and Police Act 2005 (c. 15). Subsections (3A), (4A) and (7) were added by section 12 of the Domestic Violence Crime and Victims Act 2004.

Request for a European protection order from a protected person where the protection measures relate to a member State other than the United Kingdom

15.—(1) This regulation applies where a protected person makes a request for a European protection order to the central authority for England and Wales.

(2) The central authority for England and Wales must as soon as possible send the request to the competent authority of the member State to which the protection measure relates.

Notification of breach of a European protection order

16.—(1) The central authority for England and Wales must notify the competent authority of the issuing State, using the form set out in Annex II to the Directive, if it becomes aware of a breach of a restraining order made under these regulations.

(2) When sending a notification under paragraph (1), the central authority must send a copy of the form translated into the official language, or one of the official languages, of the issuing State, or an official language of the European Union if the issuing State has declared under Article 17 of the Directive that it will accept a translation into that language.

Modification of the European protection order (and giving effect to a modified order)

17.—(1) This regulation applies where—

- (a) the competent authority of the issuing State has modified a European protection order (“the modified EPO”); and
- (b) it or the central authority of the issuing State has sent the following documents to the central authority for England and Wales—
 - (i) the modified EPO or a copy of it, in the form set out in Annex I to the Directive; and
 - (ii) if the form is not in English, a copy of the form translated into English.

(2) The central authority for England and Wales must give a magistrates’ court a copy of the modified EPO.

(3) The magistrates’ court must, without undue delay, give effect to the modified EPO unless—

- (a) the modified prohibition or restriction is not of a kind mentioned in Article 5 of the Directive; or
- (b) the information provided in the modified EPO is incomplete.

(4) Where paragraph (3)(b) applies, the magistrates’ court must without delay—

- (a) notify the competent authority of the issuing State that the information provided is incomplete; and
- (b) request the authority to provide the missing information, specifying a reasonable period for it to do so.

(5) Where, under paragraph (4)(b), the magistrates’ court has specified a period within which the missing information must be provided and the missing information is received by the court within the specified period, the court must (unless paragraph (3)(a) applies), without undue delay, give effect to the modified European protection order.

(6) Where the magistrates’ court is required by paragraph (3) or (5) to give effect to the modified EPO, it must vary the restraining order made under section 5 of the Protection from Harassment Act 1997 to which the person causing danger is subject (by virtue of regulation 13) by making a further order under that section.

(7) Section 5 of the Protection from Harassment Act 1997 has effect for the purposes of the variation of a restraining order under this regulation as it has effect for the purposes of regulation 13 (and see in particular regulation 13(2)).

(8) Where a magistrates’ court varies a restraining order under this regulation, regulation 14(3) and (4) apply to the court as they apply to a magistrates’ court which has made a restraining order under regulation 13.

Revocation of the European protection order

18.—(1) This regulation applies where—

- (a) the competent authority of the issuing State has revoked or withdrawn a European protection order; and
- (b) the competent authority of the issuing State has notified the central authority for England and Wales of the revocation or withdrawal.

(2) The central authority for England and Wales must, as soon as possible, notify a magistrates' court of the revocation or withdrawal of the European protection order.

(3) When notified under paragraph (2), the magistrates' court must, as soon as possible, discharge the restraining order which was made for the purpose of giving effect to the European protection order.

Discharging a restraining order made under these regulations

19.—(1) A magistrates' court may, in any of the cases mentioned in paragraph (2), discharge a restraining order made under these regulations—

- (a) on an application made by the protected person or by a guardian or other representative on the protected person's behalf;
- (b) on an application by the person causing danger; or
- (c) of the court's own motion.

(2) The cases referred to in paragraph (1) are where—

- (a) the court is satisfied that the protected person is not residing or staying in England or Wales;
- (b) the competent authority of the issuing State has modified a European protection order and none of the prohibitions or restrictions contained in the modified order is of a kind mentioned in Article 5 of the Directive;
- (c) the competent authority of the issuing State has modified a European protection order and the information provided in the modified order—
 - (i) is incomplete; and
 - (ii) is not completed within the period specified by the magistrates' court under regulation 17(4)(b);
- (d) in relation to the person causing danger, the competent authority of the issuing State makes a request for monitoring of supervision measures under regulation 85 of the Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014^(a) ("the Protocol No. 36 Regulations") and a magistrates' court decides to recognise the decision on supervision measures under paragraph (5) of that regulation.

(3) Where, in the exercise of this regulation, a magistrates' court discharges a restraining order, it must immediately ensure that the competent authority of the issuing State and, where possible, the protected person are informed of the decision.

(4) In this regulation, "request for monitoring of supervision measures" is to be read in accordance with regulation 85(2) of the Protocol No. 36 Regulations.

15th December 2014

Shailesh Vara
Parliamentary Under Secretary of State
Ministry of Justice

(a) S.I. 2014/3141; amended by S.I. 2014/3191.

Grounds for refusal to give effect to a European protection order

1. The European protection order—
 - (a) is incomplete; and
 - (b) is not completed within the period specified under regulation 14.
2. The requirements set out in Article 5 of the Directive have not been met.
3. The protection measure on the basis of which the European protection order was issued was based on conduct that would not constitute an offence under the law of England and Wales if it occurred there.
4. The person causing danger benefits from an immunity under the law of England and Wales which makes it impossible to give effect to the European protection order under these regulations.
5. The protection measure on the basis of which the European protection order was issued was based on conduct where, under the law of England and Wales—
 - (a) the criminal prosecution of the conduct would be statute-barred; and
 - (b) the conduct falls within the jurisdiction of England and Wales.
6. Giving effect to the European protection order would contravene the principle of *ne bis in idem*.
7. The protection measure on the basis of which the European protection order was issued was based on conduct by a person who was under the age of 10 when the conduct took place.
8. The protection measure on the basis of which the European protection order was issued relates to a criminal offence which, under the law of England and Wales, is regarded as having been committed wholly or for a major or essential part, within its territory.

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations transpose, for England and Wales, Directive 2011/99/EU of the European Parliament and of the Council of 13th December 2011 on the European Protection Order (“the Directive”) (OJ No. L 338, 21.12.2011, p.2).

Part 2 gives to magistrates’ courts and, in certain circumstances, the Crown Court the power to make a European protection order (“EPO”) on the application of a protected person. Regulation 3 provides that, for the purposes of Part 2, a “protected person” is an individual who is the object of the protection given by a protection measure. A “protection measure” is a decision or order of a court in a criminal cause or matter which imposes certain prohibitions or restrictions on the conduct of an individual (for example preventing the person visiting particular areas or contacting or approaching a protected person). Before making an EPO the court must be satisfied that there are existing domestic protection measures in force and that the protected person either already resides or stays, or has decided to reside or stay, in another member State of the European Union (“the executing State”). In deciding whether to issue an EPO the relevant court must consider such matters as it thinks appropriate, including the length of the period or periods that the protected person intends to reside or stay in the executing State and the seriousness of the need for protection of the protected person while residing or staying in the executing State. Applications may be made to a magistrates’ court or (where an application for an EPO is made at the same hearing at which the protection measure was made) to the Crown Court. An application which comes via the executing State is to be treated as if made to a magistrates’ court (regulation 5). Regulation 6 deals with the form and content of an EPO. Under regulation 7 the court must ensure a protected person is told of the possibility of applying for an EPO where a protection measure has been made. If an application for an EPO is refused the protected person must be told of any

applicable legal remedy that may be available against the decision. Regulation 9 imposes a duty on the relevant court, once it has made an EPO, to transmit the EPO to the competent authority of the executing State. Regulation 10 deals with decisions to renew, modify and revoke the underlying protection measure and the effect on the EPO.

Part 3 makes provision for recognising and giving effect to an incoming EPO (i.e. one from a member State other than the United Kingdom). In this situation, that other member State is the “issuing State” and the UK is the “executing State”. Regulation 12 provides that where an EPO is sent to the central authority for England and Wales, a magistrates’ court will need to decide without undue delay whether any ground for refusal to give effect to the EPO in the Schedule applies. If none apply, the court must give effect to the EPO. If a ground for refusal applies, the court may refuse to recognise the EPO and must ensure the competent authority of the issuing State and the protected person (or guardian or representative) are informed of the decision and the grounds for doing so.

Regulation 13 directs a magistrates’ court to give effect to an incoming EPO by making a restraining order under section 5 of the Protection from Harassment Act 1997 (c. 40), and modifies section 5 for the purpose of doing so. Regulation 14 deals with cases where the information provided in the EPO is incomplete. It also provides that where a restraining order is made to give effect to an EPO the individual who is subject to the order (the “person causing danger”), the protected person and the competent authority of the issuing State are informed of the terms of the order and the possible legal consequences in the event of breach. Regulation 15 is a procedural provision to deal with cases where a protected person makes his or request for an EPO in England and Wales but where the issuing State would be a member State other than the United Kingdom. The central authority for England and Wales must send the request on to the relevant member State. Regulation 16 provides that the central authority for England and Wales must notify the competent authority of the issuing State if it becomes aware of a breach of a restraining order made for the purpose of giving effect to an incoming EPO.

Regulation 17 applies where the competent authority of the issuing State has modified an EPO. A magistrates’ court must give effect to any modified prohibitions or restrictions unless they are not of a kind referred to in Article 5 of the Directive. Where the competent authority of the issuing State has revoked or withdrawn an EPO the magistrates’ court must discharge the restraining order when notified (regulation 18). Regulation 19 gives a power to a magistrates’ court to discharge a restraining order made on the basis of an EPO in certain circumstances, including where the court is satisfied the protected person is no longer residing or staying in England and Wales.

A full impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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