



Association of **Lawyers for Children**

Promoting justice for children and young people

Consultation response: Civil Protection Measures Regulation

Response of the Association of Lawyers for Children

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The Association of Lawyers for Children (hereafter “ALC”) is a national association of lawyers working in the field of children law. It has close to 1,000 members, mainly solicitors and family law barristers who represent children, parents and other adult parties, or local authorities. Other legal practitioners and academics are also members. Its Executive Committee members are drawn from a wide range of experienced practitioners from both sides of the legal profession practising in different areas of the country. Several leading members are specialists with over 20 years’ experience in children law, including local government legal services. Many have written books and articles and lectured about aspects of children law and hold judicial office. The ALC exists to promote access to and equality of justice for children and young people within the legal system in England and Wales in the following ways:

- i. lobbying in favour of establishing properly funded legal mechanisms to enable all children and young people to have access to justice;
- ii. lobbying against the diminution of such mechanisms;
- iii. campaigning and advocating on against any form of discrimination which may affect children within the family justice system
- iv. providing high quality legal training, focusing on the needs of lawyers and non-lawyers concerned with cases relating to the rights, welfare, health and development of children;
- v. providing a forum for the exchange of information and views on the development of the law in relation to children and young people;
- vi. being a reference point for members of the profession, governmental organisations and pressure groups interested in children law and practice; and
- vii. funding or co-funding research where we perceive gaps in knowledge or evidence relating to changes in policy and practice in children proceedings.

The ALC is a stakeholder in respect of all government consultations pertaining to law and practice in the field of children law and welcomes this opportunity to provide its views in respect of this consultation.

Domestic abuse and other protection orders

The types of orders to which this regulation will most commonly relate is non molestation and occupation orders to protect from domestic abuse or other forms or intra familial or intimate relationship harassment or molestation. We recognise that Protection from Harassment Act 1997 orders may fall under this Regulation. These are granted by the civil court and not typically by the Family Court.

Throughout 2022¹ there were 32,049 applications for domestic violence remedy orders which led to 38,475 orders. 84% of the total applications was for a Non-molestation order and 95% of orders made were NMOs. 16% of the applications were for an Occupation order and 5% of the orders made were occupation orders. The rates of domestic abuse injunctions rise year on year and have been since 2009. There was a steep rise in the second quarter of 2020 which may correspond with the covid restrictions. The applications in 2022 were up 4% compared to 2021. In the last quarter of 2022 the applications had risen by 3% compared with 2021 although the corresponding number of orders made has only risen by 1%.

These are readily accessible highly used remedies.

The Regulation is a highly flexible instrument in terms of the protective measures that it covers. It is widely drawn which allows for the differences in injunctive relief provided for under UK law. Even within the range of protective measures that we have in England and Wales the restrictions operating against the respondent vary considerably nevertheless the three essential protections as defined in Regulation 3 are largely present:

- (1) 'protection measure' means any decision, whatever it may be called, ordered by the issuing authority of a participating Member State in accordance with its national law and imposing one 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 ONS data for reporting of domestic abuse vividly demonstrates that those who seek protection orders are the tip of the iceberg in terms of those who may be experiencing abuse:

“In the year ending March 2022 there were 589,389 domestic abuse-related incidents recorded by the police in England and Wales. This was a decrease

¹ <https://www.gov.uk/government/statistics/family-court-statistics-quarterly-october-to-december-2022/family-court-statistics-quarterly-october-to-december-2022#domestic-violence-remedy-orders>

from 613,929 in the previous year, and a return to a similar number seen before the coronavirus (COVID-19) pandemic. The number of domestic abuse-related crimes recorded by the police increased by 7.7% to 910,980 compared with the year ending March 2021. This continues the trend of increases seen over recent years which may, in part, be driven by increased willingness of victims to come forward to report domestic abuse.”²

There are fundamental emotional, financial, practical and psychological barriers to victims of domestic abuse seeking to distance themselves from domestic abuse and seek the court’s assistance to maintain their safety in the process and thereafter. Thus the cohort of individuals who live under the protection of such orders have overcome substantial barriers to obtain that protection. In our member’s experience it is an emotionally difficult step for an applicant to enforce an order if they experience behaviours amounting to a breach. Any perceived or practical barrier to making and maintenance of a complaint presents an opportunity for the victim to be diverted from that course.

Whilst the statistics will differ from country to country the psychological impact of domestic abuse and the barriers to self-protection will not. Where a person is present in the UK with a protection order from a member state of the EU it is difficult to conceive of a legitimate reason for the UK to create a barrier for the victim’s enforcement of that order should it be breached in this jurisdiction.

Absence of Special Procedure for Reciprocal Enforcement

The absence of any special procedure to enforce protective orders between Member States is an invaluable feature of the Regulatory scheme. The scheme for protection orders in England and Wales has fairly successfully, in our assessment, achieved highly accessible remedies to individuals without the assistance of lawyers. It is not uncommon for domestic abuse victims to be assisted by the police or a refuge or domestic abuse charity to make an application to the court under Part IV of the Family Law Act 1996 in person and to obtain an order without ever involving a lawyer. This is an important feature of the protection order framework in the UK, it is easy to navigate and access with signposting and some advice. The orders are readily sought and have a good take up. Thus, the applicants more than many groups would not find it easy to access advice to ensure that it is enforceable in a European member state. There is we suggest a necessity for reciprocal enforcement without any special procedure for those with orders in the UK and for those with orders from abroad.

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<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/domesticabuseinenglandandwalesoverview/november2022#:~:text=The%20number%20of%20domestic%20abuse,forward%20to%20report%20domestic%20abuse.>

It is a poor indictment on the Government that when negotiating the EU exit there was no reciprocal protection for those in the UK with the benefit of a protection order. Their position now is well described in the consultation document “[t]herefore, a UK national going to an EU member state now would need to lodge a fresh application for new protection measures to be brought into force in line with the domestic rules of the EU member state the person is residing in, or visiting.” The revisiting of this position with the EU ought to be considered urgently.

The current Regulation requires fairly simple steps to be taken for enforcement outside of the country in which the protection measure was obtained, we note the helpful summary in the consultation:

“A person benefitting from a protection measure (“a protected person”) who wishes to invoke their protection measure in another member state, is required to produce

(under Article 4(2) CPM Regulation):

- *a copy of the protection measure;*
- *a certificate issued in the member state of origin; and*
- *where necessary, a translation or transliteration.”*

Once the translated order and certificate are obtained they are available for use for 12 months without further administrative action being taken by the holder of the order. 12 months is a typical duration for an NMO and the certification process may be required to be repeated if the order is longer. We are unclear if this is the position in other member states.

Option 1: Allow the CPM Regulation to sunset in England and Wales

Option 4: Reform the CPM Regulation – revoke or replace parts or all of it

We do not support option 1 or option 4.

The removal of barriers to a domestic abuse victim seeking help and assistance should always be a priority in family justice we suggest. There are many psychological and emotional barriers which prevent victims from coming forward for help in the first place. Once the complainant has taken the courageous step of concluding that they need an injunction to protect themselves and obtained one its enforcement should be seamless wherever the family are as between member states when a breach occurs. Some cases where these orders arise which cross international borders are cases where a person has relocated for their own protection to prevent further violence or abuse. Automatic recognition of the protection order is an essential protection if their whereabouts are discovered and they receive harassment or abusive behaviours when outside of the jurisdiction which issued the protective measure.

Option 2: Preserve the CPM Regulation as drafted

Option 3: Reform the CPM Regulation - Restate parts or all of it to remove unnecessary EU references

We support either option 2 or option 4. Provided always that the essential substantive provisions of the regulation are not changed such as to dilute the recognition and enforcement provisions set out therein. We see the force in a change of the language so as to remove reference to the European court etc. we do not support substantive amendment to the effects of the Regulation itself.

Answers to Questions

Q1: Do you have any data, experience or insights into whether and how the CPM Regulation is used in England and Wales and any preventive effects it has had?

It is our members experience that it is used to recognise protective orders and on more limited occasions to enforce them. That said the information is anecdotal and there are no statistics that we are able to provide. There is however a wider societal obligation to make provision for these orders to be easily enforced in our jurisdiction without barriers for complainants who have the potential to be easily diverted from seeking support for their protection and from self-protection. If one person it enabled to prevent, or enforce a breach upon experiencing, harassment, violence and/or abuse the Regulation has served a valuable public interest, we suggest.

Q2: The CPM Regulation is no longer reciprocal. Should protection measures from EU member states be given automatic recognition and enforcement in England and Wales if the same or similar treatment is not guaranteed in EU member states? Should such treatment be given to protection measures from EU member states but not other countries?

Yes we should provide these protections within our borders. Our court system should not have to receive additional and unnecessary applications for new orders when there are perfectly properly evidence orders having been made under another legal system. In any event we are society who would seek to provide protection for those experiencing harassment and abuse without placing barriers in their way. The public interest in prevention of domestic abuse inside our borders from wherever it originates is a significant one. It ought to outweigh self-interested considerations like whether it is extended to our citizens abroad, we suggest.

Q3: If the CPM Regulation and its implementing framework were left to sunset, what effects would this have? What would the relative effect be given the availability of protection measures under domestic law?

The reality is that absent the regulation the person who has entered the jurisdiction from a European member state with a protection order in their favour who then goes on to experience domestic abuse from the respondent inside the UK will be reliant upon the criminal law for protection. There is little or no enforcement available to them or an order made outside the UK. If the regulation is not extended a person enters the UK with the benefit of a protection order from an EU Member state would have to mirror that order in the UK, i.e. apply to the family court for the equivalent order with the disadvantages of (i) the respondent having to be served and revealing the presence of the victim in the jurisdiction, (ii) substantial court costs to obtain a new order in this jurisdiction and (iii) emotional and psychological costs which may involve the retraumatising of the victim. The UK would not simply become an unattractive safe haven for a person being relocated for their protection it would be a hostile place to come and have the benefit of already established protective orders.

Q4: If the CPM Regulation were to be preserved, what changes, if any, do you consider would be useful, such as restatements of certain provisions, or substantive changes such as those discussed in this paper? What would the pros and cons be of such changes?

We suggest that the regulation is preserved. We do not agree with substantive changes as set out in the paper. The fact of having an order without its recognition is in truth no protection at all. The serving upon the police of a protective order which is not certified as recognised in the UK under the Regulation will not allow the holder to avail themselves of the protections it affords. Unless the criminal law is transgressed to the evidential satisfaction of the police then there is no meaningful enforcement of such an order. We agree that there is a language issue that minor amendments to the text of the instrument can remedy but we do not support any substantive change which would diminish the ability of the holder to recognise and enforce a protection order made in a state of the EU. We would support the extension of the regulation to other jurisdictions where we have confidence in the integrity of its justice system. Changes which diminish the substantive effect of the Regulation have the potential to increase the burden upon the family court as the holder of an order which is not guaranteed recognition and enforcement in the UK is likely to have to apply to court for a non molestation order of Protection from Harassment Act order.

The Family Court is overburdened in England and Wales. Though the actual increase in application numbers arising from this cohort may be modest they are likely to be more time consuming of court resources, the ALC submits. There would be a necessity to provide evidence in support of the order and directions, with the costs from seeking disclosure from the foreign state in which the original order was made or where the events took place. The respondent would be joined as a party and would have to have notice, a chance to provide evidence and engage in their defence of the order. This is likely to require translation costs for documentation and disclosure, interpreter costs for both parties before the court, multiple hearings to ensure that the evidence is made available more so if neither employ lawyers in this jurisdiction. Legal aid is unlikely to

be available. These cases would use a disproportionate amount of MOJ and court resources, we suggest. Of heightened concern to us is the potential to reveal information about the area of the UK in which the victim is residing, i.e. issuing in a local court which the respondent has to be served to attend in person or remotely. The applicant's safety may be compromised.

Automatic recognition and enforcement of a European State granted protection order without special procedure prevents these costs and resources being consumed and allows for the continued safety of the person who protected by such an order inside the UK.

We can see no realistic advantages to the process of diluting any of the provisions of the Regulation and invite consideration by the Secretary of State to adopt option 2 or 3 with no substantive changes to the effect of the Regulation as currently drafted.

10.5.2023