

CORONAVIRUS (SCOTLAND) ACT 2020

EXPLANATORY NOTES

DETAIL ABOUT PROVISIONS

Schedule 4 – Justice

Part 6 – Community orders

Community payback orders: extension of unpaid work or other activity requirements

155. Paragraph 12 of schedule 4 extends by 12 months the period within which unpaid work or other activity requirements in Community Payback Orders (“CPOs”) must be completed. This applies to all CPOs imposed by a court on or before the day this Act received Royal Assent, and affects the particular period specified for each individual order (i.e. whatever period was originally specified by the court when each individual CPO was imposed, that period will be 12 months longer).
156. Subparagraph (3) enables the Scottish Ministers to further extend this period, by regulations. Such a further extension would apply to all CPOs imposed on or before the day the regulations come into force. The regulations can only be made if the Scottish Ministers are satisfied that, if no action were taken, it is likely that there would be non-compliance with unpaid work or other activity requirements as a result of the coronavirus pandemic, or that such regulations are necessary as a result of the impact of the pandemic on local authorities (which deliver community orders through justice social work) or on the Scottish Courts and Tribunals Service.
157. Subparagraph (7) places a duty on local authorities to inform those subject to the relevant CPOs of the changes made by this provision (e.g. that the period within which the unpaid work or other activity requirement has been extended, and by how much).

Community payback orders: time limit for completion of unpaid work or other activity

158. Paragraph 13 modifies the application of section 227L of the Criminal Procedure (Scotland) Act 1995 in order to provide that, when imposing an unpaid work or other activity requirement as part of a CPO, the court must specify a period of 12 months or more when determining how long the offender has to complete the requirement.

Community orders: postponement

159. Paragraph 14 enables the Scottish Ministers, by regulations, to postpone the effects of CPOs or drug treatment and testing orders (“DTTOs”). The orders to be affected by such a postponement can be specified by reference to the type of order (e.g. Community Payback Order); the requirements imposed under an order (e.g. supervision requirements); the type of offender; and the type of offence the offender has been convicted of.

*These notes relate to the Coronavirus (Scotland) Act
2020 (asp 7) which received Royal Assent on 6 April 2020*

160. During the period of postponement, which cannot be longer than 6 months, no time elapses with regard to any relevant time periods specified in the order. For example, if a CPO contained an offender supervision requirement which, at the point of postponement, had 3 months left to run, that position would be maintained until the end of the postponement period, at which point 3 months would still remain. During the period of postponement, the offender is not subject to any of the requirements of the order and so cannot breach the order.
161. The regulations cannot postpone an unpaid work or other activity requirement; the modifications of such requirements as a result of coronavirus are dealt with separately under paragraph 12.
162. The regulations can be made only if the Scottish Ministers are satisfied that, if no action were taken, it is likely that there would be non-compliance with the requirements of community orders as a result of the coronavirus pandemic, or that such regulations are necessary as a result of the impact of the pandemic on local authorities (which deliver community orders through justice social work) or on the Scottish Courts and Tribunals Service.
163. Subparagraph (7) places a duty on local authorities to inform those subject to the relevant CPOs or DTTOs of the changes made under any such regulations (e.g. that certain requirements in their order have been postponed, and for how long).

Community orders: variation

164. Paragraph 15 enables the Scottish Ministers, by regulations, to vary the requirements of CPOs or DTTOs. Such variation can include revoking requirements, or orders in their entirety.
165. The orders to be affected by such a variation can be specified by reference to the type of order (e.g. Community Payback Order); the requirements imposed under an order (e.g. supervision requirements); the type of offender; and the type of offence the offender has been convicted of.
166. Certain restrictions are placed on this regulation-making power, which all broadly serve to ensure that it cannot be used to increase the severity of the sentence, or to alter aspects which are unlikely to be affected by the effects of coronavirus. In particular, regulations cannot change the amount of compensation to be paid; increase the number of hours of unpaid work or activity; increase or extend the period during which an offender is subject to a requirement; or increase the period during which an offender's movements are to be restricted.
167. The regulations can only be made if the Scottish Ministers are satisfied that, if no action were taken, it is likely that there would be non-compliance with the requirements of community orders as a result of the coronavirus pandemic, or that such regulations are necessary as a result of the impact of the pandemic on local authorities (which deliver community orders through justice social work) or on the Scottish Courts and Tribunals Service. In addition, the Scottish Ministers must be satisfied that any variation through regulations does not make the affected orders more difficult to comply with.
168. Subparagraph (6) places a duty on local authorities to inform those subject to the relevant CPOs or DTTOs of the changes made under any such regulations (e.g. that certain requirements in their order have varied, and in what way).