

## EQUALITY IMPACT ASSESSMENT – RESULTS

<b>Title of Policy</b>	<b>The Community Orders (Coronavirus) (Scotland) Regulations 2021</b>
<b>Summary of aims and desired outcomes of Policy</b>	<p>As a result of the COVID-19 pandemic, the capacity of justice social work (JSW) services to deliver unpaid work (UPW) or other activity requirements imposed as part of community payback orders (CPOs) has been significantly reduced.</p> <p>The varying of unpaid work and other activity requirements of existing Community Payback Orders (except those imposed for domestic abuse, sexual offences, or stalking) is intended to reduce the overall volume of hours to be delivered and ensure that the community justice system can continue to operate effectively.</p>
<b>Directorate: Division: Team</b>	Justice: Community Justice Division: Community Interventions team

### Executive Summary

1. As a result of COVID-19, JSW services have experienced difficulties in continuing to implement CPOs, particularly in delivering UPW or other activity<sup>1</sup> requirements, which are often carried out in groups. The Coronavirus (Scotland) Act 2020 (the 2020 Act) extended all UPW requirements by 12 months (and required all new orders to be at least that long) in order to help resolve the immediate issues arising from the crisis, allowing JSW services to safely suspend UPW programmes during the first national lockdown without any orders being inadvertently breached as a result.
2. While this immediate step was successful in ensuring that JSW could continue to function effectively in the short to medium term, Social Work Scotland (SWS) has raised significant concerns about the deliverability of outstanding UPW requirements. Capacity within JSW to deliver UPW has remained substantially reduced primarily due to measures designed to keep individuals on orders and staff safe (e.g. physical distancing) as well as varying national and local restrictions. In addition, there was also an increase in court business and new community order disposals from summer (as restrictions began to ease) to January 2021, when the majority of summary court business was adjourned due to the increased level of public health risk associated with coronavirus and to align with national restrictions.

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<sup>1</sup> Unpaid work or other activity is a single requirement. The number of hours imposed by the court can be allocated between the two different aspects by the responsible officer within the relevant local authority, though other activity cannot constitute more than 30 hours or 30% of the total number of hours imposed, whichever is lower.

3. The 2020 Act introduced further powers for Scottish Ministers to vary or revoke requirements in CPOs and Drug Treatment and Testing Orders (DTTOs), and these were intended to be used should the situation worsen significantly, and/or to assist during the recovery phase should it become clear that orders are not deliverable. In order to address the concerns raised by SWS and to alleviate the pressure on JSW services, regulations are being brought forward using these powers to vary, on a proportionate and limited basis, UPW or other activity requirements in CPOs.
4. Subject to agreement by the Scottish Parliament, the regulations will vary all unpaid work (UPW) or other activity requirements in Community Payback Orders (CPOs), reducing the number of hours imposed in each order by 35%. These regulations apply to all CPOs imposed prior to the regulations coming into force with an unpaid work or other activity requirement where hours are outstanding. The only exceptions are those CPOs imposed either entirely or partially for domestic abuse, sexual offences or stalking. This will result in approximately 290,000 hours being removed from the system. It is estimated, based on unit level data from April 2020, that up to 15% of outstanding orders will be automatically completed once the proposed regulations come into force.
5. The exclusion of domestic abuse, sexual offences, and stalking is intended to mitigate risks arising from the particular barriers that exist in relation to the reporting of those offences (and which are not found to the same extent with other offence types), and which the Scottish Government and other justice organisations have taken steps to reduce in recent years. These include action under Equally Safe, our national strategy to take action against all forms of violence against women and girls, ground-breaking domestic abuse legislation, investment in training and support, and campaigns.
6. This approach is also informed by engagement with Police Scotland and victims organisations with specialist knowledge and insight around barriers to reporting of crime in relation to particular offences. Specifically, this exclusion recognises that reducing UPW hours associated with those offences may, while only applying to existing orders, risk reducing future reporting rates. It is therefore considered appropriate to exclude orders involving domestic abuse, sexual offences and stalking to avoid the risk of an adverse effect on the reporting of those offences by victims.
7. The regulations will take effect once approved by Parliament and will be applicable to outstanding CPOs with UPW or other activity requirements (other than those subject to exemption as outlined above). They will apply a proportionate reduction to the hours of UPW originally imposed by the court and will maintain a connection with the original sentence imposed by the courts in order to avoid introducing any new differential effects.
8. This Equality Impact Assessment (EQIA) has considered the potential impacts of the Community Orders (Coronavirus) (Scotland) Regulations 2021 on the protected characteristics of age, disability, sex and gender, race or belief, gender reassignment and pregnancy.

9. Overall, the EQIA has not identified any aspect of the provisions that would adversely impact on any equalities groups and no objection has been raised to the proposals from stakeholders on the basis of an inequitable burden being placed on equalities groups. However, the provisions in the regulations may have a small positive impact on women - who are more likely than men to be victims of domestic abuse, sexual offences and stalking - by excluding these offence types, which may serve to mitigate adverse effects on the reporting of those offences.

## **Background**

10. CPOs are community sentences which contain one or more of nine possible requirements, including that of UPW or other activity. They are issued by the court and are implemented by local authorities through JSW services who carry out the supervision of those on orders, organise and oversee UPW, and report back to the courts on progress and any potential breaches. In terms of scale, in 2018/19, 16,400 CPOs were imposed, of which 73% had an UPW requirement.
11. Data provided by local authorities indicates that around 740,000 hours of UPW were outstanding across Scotland as of November 2020, increasing from around 700,000 before summer. While such levels may not be significantly greater than local authorities ordinarily manage at any one time, capacity to deliver hours is significantly lower than normal due to the pandemic and associated restrictions. It should also be noted that in light of increased national restrictions in January 2021, face-to-face UPW has largely been temporarily suspended again across most local authorities.
12. As a result, it will not be feasible in the short/medium term to deliver the volume of hours previously possible. There also remains potential for local spikes in coronavirus, or increases on a national basis, as is the case just now where the majority of Scotland has seen restrictions increase further than the tier system that was previously in place. Although a COVID-19 vaccination is now being rolled out, this will not solve the capacity issues in delivering the backlog of outstanding UPW hours. The vaccination programme is taking place in a scheduled and gradual way and restrictions are likely to still be in place until all population groups have received this.
13. Community orders must be completed within timescales required in line with legislation and decisions by the courts, and if JSW is operating at a reduced capacity for a significant period of time, it is unlikely to be able to service both new orders (when court business resumes) and outstanding UPW hours which remain as a result of the pandemic restrictions. Changes are proposed on a limited and proportionate basis, seeking to ensure the justice system can operate effectively and confidence is retained in community orders.
14. Further detailed information on the regulations can be found in the policy note.

## **The Scope of the EQIA**

15. As this secondary legislation proposes a short-term intervention to avoid the potential for JSW services being overwhelmed as a result of the pandemic, rather than outlining a long term, strategic objective, it was considered that an extensive EQIA was not required for this policy.
16. In order to gather evidence for this EQIA, consultative discussions were held with SWS who regularly provided data to the Scottish Government on hours outstanding for UPW requirements and UPW supervisor absences. In addition, the Scottish Government also engaged with other key stakeholders to discuss the proposals at a high level, including: Community Justice Scotland (CJS), COSLA, the Scottish Courts and Tribunals Service, the Scottish Sentencing Council secretariat, ASSIST, Rape Crisis Scotland, Scottish Women's Aid, and Police Scotland.
17. Due to this secondary legislation being part of the provisions that were outlined in the 2020 Act, the EQIA that was carried out in relation to the primary legislation also acted as a data source for this EQIA.

## **Key Findings**

18. The EQIA process has given us confidence that varying the UPW or other activity requirement of the majority of existing CPOs will not have any significant adverse or unfair impact on any particular group of people.
19. This secondary legislation will focus specifically on UPW or other activity requirements only, with all other requirements remaining intact. Therefore, individuals subject to requirements that are imposed because they have been assessed as posing a higher risk of reoffending and/or causing harm, and require supervision or specific interventions, will continue to be supervised, monitored, and supported by JSW and other relevant agencies.
20. By applying a proportionate reduction to the hours of UPW originally imposed by the court, a connection will be maintained with the original sentence imposed, thus avoiding introducing any new differential effects. As explained above the exclusion of the offences outlined previously from these provisions could have a small positive impact on women, who are more likely than men to be victims of domestic abuse, sexual offences and stalking, by ensuring that orders imposed by the court for such offences are still expected to be served, despite the impact of coronavirus.
21. With regard to specific protected characteristics, the key findings are:

## **Age**

22. As this policy is not targeted at a specific age group, rather all those subject to an UPW or other activity requirement as part of a CPO (other than the exemptions outlined previously), it is not expected to have an impact on the protected characteristic of age.
23. The provisions will apply a proportionate reduction to the hours of UPW originally imposed by the court (other than those that have been imposed for the offences that are exempt). We acknowledge that young people under the age of 18 are least likely to be affected by these provisions, however this is a result of the composition of the offending population - young people are proportionately less likely to receive a CPO with evidence showing that 16-17 year olds made up only 2% of individuals who received a CPO in the 2018/19 period.
24. Further consideration was given regarding the impact of the provisions on the risk to children posed by individuals subject to UPW requirements – particularly around the growing body of information indicating the increase in domestic abuse during and post-lockdown.
25. However, UPW has no risk management element, and offences relating to domestic abuse are exempt from these regulations. Therefore, reducing the amount of UPW a certain individual is to carry out does not increase risk of harm to children, young people, or the wider community. As explained above, any other aspects of CPOs which are relevant to keeping victims and communities safe will remain in place. As a result, individuals who have the highest need and pose the greatest risk to society will continue to be supervised and supported. Reducing UPW in a proportionate manner may increase engagement with the order and reduce risk of breach. A clear goal which can be completed in a reasonable and realistic timescale may support desistance and counter risk of individuals disengaging.
26. JSW has continued to prioritise cases throughout the period affected by COVID-19 where any risk to children is present, and it is expected that social work will continue to maintain close contact with those individuals who present a high risk, whilst also working in close collaboration with children and families services and other relevant agencies to ensure the safety and wellbeing of children.
27. Overall, we do not consider there to be any increased risk to children as a result of reducing the overall amount of hours of UPW or other activity requirements, nor any differential effect based on age other than that which reflects the composition of the population affected by the regulations.

## **Disability**

28. The provisions in this secondary legislation may have a positive impact on individuals subject to CPOs with an UPW or other activity requirement who have

certain disabilities or underlying health conditions. Reducing outstanding UPW hours would decrease the continued risk to their health posed by the spread of COVID-19 via person-to-person contact and the group work associated with UPW.

29. The provisions could also serve to mitigate the risk of exacerbating existing mental health conditions for people who may be experiencing stress and anxiety in relation to the government's advice and guidance around physical distancing, and concerns they may have had related to their UPW. This is a particular issue given that group work activity is the most common mode of UPW delivery across all of Scotland, and physical distancing measures severely limit this.
30. It is recognised that people with mental health difficulties may benefit from attending UPW and the positive contact and opportunities for change it can provide. However these provisions are being applied in a proportionate and limited manner which allows for the majority of an individual's UPW to be completed, and is balanced with the public health risks, as outlined above, and assurances that JSW will, with partner agencies, ensure that vulnerable people are not adversely affected by these provisions.

### **Sex/Gender**

31. While the percentage of men and women receiving a community sentence after having been convicted of a crime are broadly similar (20% and 18% respectively), according to JSW statistics for 2018-19, the proportion of community orders issued to males was 85%, reflecting the fact that overall, men are much more likely to be convicted of an offence.
32. Men are also more likely than women to receive a custodial sentence. Data from the Criminal Proceedings in Scotland 2018-19 statistics shows that men are twice as likely to receive a custodial sentence than women (17% and 8% respectively). This is mainly due to the fact that women are less likely to be convicted of sexual and violent offences and more likely to be convicted of less serious offences such as crimes of dishonesty. For total crimes and offences, the gender split was 72% male, 18% female based on convictions in 2018/19. For non-sexual crimes of violence, the gender split was 88% male and 12% female and for sexual crimes the split was 97% male and 3% female, compared to 75% male and 25% female for crimes of dishonesty.
33. It is important to note these different representations that women and men have across the sentenced population. While a percentage reduction in UPW hours is likely to remove more hours, in absolute terms, from those who have committed more serious offences (predominantly men) and less hours for minor offences (with more women represented), this is entirely reflective of the original sentences imposed and the demographics of the offending population at large, rather than being a direct result of the provisions outlined in this SSI.
34. There have been significant concerns about the rise in domestic abuse and the impact this has had, and continues to have, on victims – the vast majority of

whom are women - throughout the COVID-19 pandemic. Statistics from 2018/19 showed that men accounted for 89% of convictions for domestic offences, compared to women who accounted for 11%.

35. However, as stated, UPW has no direct function in the management of risk or public protection, unlike certain other requirements of CPOs such as supervision, programme, or conduct requirements. Accordingly, this secondary legislation will focus specifically on UPW or other activity requirements only, with all other requirements remaining intact. Therefore, individuals subject to requirements that are imposed because they have been assessed as posing a higher risk of reoffending and/or causing harm, and require supervision or specific interventions (including in relation to domestic abuse, such as individuals subject to programme requirements to attend the Caledonian Programme), will continue to be supervised, monitored, and supported by JSW and other relevant agencies.
36. Research shows that there are particular barriers to reporting of domestic abuse and sexual offences. The Whole Lives Survivor Survey<sup>2</sup> from Safe Lives found that, on average, survivors experienced four years of domestic abuse before telling someone. Whilst a wide range of action has been taken to help remove those barriers and increase protection from abuse, following the impact of coronavirus on the justice system (which has resulted in significant delays), there are particular concerns from victim support organisations about an increased loss of trust and confidence of victims in their cases being dealt with over recent months. In that context, the risk of an impact on reporting associated with domestic abuse and sexual offending is increased.
37. As noted previously, perpetrators of domestic abuse, sexual offences, and stalking who have been made subject to a CPO for those offences will be exempt from having their outstanding hours reduced as a result of these regulations in order to mitigate against the barriers to low reporting often found with these offences. It is believed this approach could have a small positive impact on women who are victims of these offence types, by ensuring that orders imposed by the court for these offences are expected to be served, despite the impact of coronavirus.
38. In addition, the Scottish Government has positive obligations under Articles 3 and 8 ECHR and under the Istanbul Convention<sup>3</sup>, to maintain an effective system for the investigation and prosecution of gender-based crime. In the absence of exceptions for domestic abuse, sexual offending or stalking, a material reduction in the reporting of such offences could be anticipated, and this would likely have a negative impact on women in particular.

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<sup>2</sup> [Whole Lives Survivor Survey.pdf \(safelives.org.uk\)](#)

<sup>3</sup> Council of Europe Convention on preventing and combating violence against women and domestic violence; CETS No. 210.

## **Race, Religion or Belief, Sexual Orientation, Gender Reassignment, and Pregnancy/Maternity**

39. The provisions outlined would have no specific impacts on people with these protected characteristics.
40. It is acknowledged that people may be subject to CPOs with an UPW or other activity requirement as a result of offences involving individuals or groups with protected characteristics, specifically race, religion, sexual orientation, disability, and gender identity, including transgender ('hate crime').
41. Nevertheless, we do not consider that varying the UPW or other activity requirements of existing orders will have an adverse impact in relation to these particular groups or specific victims.

## **Recommendations and Conclusion**

42. Overall, we anticipate that the legislative measures outlined in this secondary legislation will have minimal impact in respect of the protected characteristics and that the overall impact of the policy is likely to be positive.
43. The measures are necessary to ensure that community orders are completed within a reasonable timescale and JSW are able to service both new and outstanding UPW hours, and continue to effectively manage CPOs with other requirements.
44. Given that varying UPW or other activity requirements for the majority of CPOs will allow the system to run and recover more effectively, the policy will ensure that JSW can focus on managing and supporting individuals on orders without the need for potentially numerous individual applications to courts to vary timescales for UPW or other activity requirements, and the justice system can respond appropriately to the ongoing impact of COVID-19.
45. Associated with this, we expect the policy to have a positive impact on those with disabilities or underlying health conditions by reducing the amount of time spent in person-to-person contact. The provisions will also serve to mitigate the risk of exacerbating existing mental health conditions for people who may be experiencing stress and anxiety at this time.
46. Additionally, as previously outlined, it has been recognised that, had orders given for domestic abuse, sexual offences and stalking been included in the reduction of UPW hours, this may have had an adverse impact on women, (who are predominately the victims of these offences) however this has been mitigated due to the exclusion of these orders. As a result of these exclusions, the provisions in the regulations may have a small positive impact on women who are victims of these offences by ensuring that orders imposed by the court for such offences are expected to be served despite the impact of coronavirus.



47. It is important to note that these provisions do not target supervision, conduct, programme, or any other requirement that may be in place for higher risk individuals. Such cases will continue to be managed and supported by JSW and will not be impacted by this SSI.

48. In addition, the EQIA process did not identify any direct or indirect discrimination through the policy intention against the protected characteristics mentioned.