

## CRWIA

### Publication Template

#### CRWIA for legislation (Scottish Government use only)

<b>The Community Orders (Coronavirus) (Scotland) Regulations 2021</b>	
<b>Executive summary</b>	<p>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.</p> <p>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.</p> <p>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.</p> <p>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</p>

<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.

	<p>level data from April 2020, that up to 15% of outstanding orders will be automatically completed once the proposed regulations come into force.</p> <p>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. 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 any adverse effect on the reporting of those offences by victims.</p> <p>The regulations will take effect once approved by Parliament and they will apply a proportionate reduction to the hours of UPW originally imposed by the court and as such will maintain a connection with the original sentence in order to avoid introducing any new differential effects.</p> <p>This Children's Rights and Wellbeing Impact Assessment (CRWIA) has considered the potential impacts of the Community Orders (Coronavirus) (Scotland) Regulations 2021 on children and young people.</p> <p>In doing so, the CRWIA has not identified any aspect that would adversely impact on this group and no objection has been raised about the proposals from stakeholders regarding any risks to children or young people.</p>
<p><b>Background</b></p>	<p>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 relevant 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.</p> <p>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.</p> <p>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 a significant increase in the volume of hours to be delivered once court business resumes, which creates significant risk that JSW services will be overwhelmed. Although a COVID-19 vaccination is now being rolled</p>

	<p>out, this will not solve the capacity issues in delivering the backlog of outstanding UPW hours and restrictions are likely to still be in place over a number of months.</p> <p>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.</p> <p>Further detailed information on the regulations can be found in the policy note.</p>
<p><b>Scope of the CRWIA, identifying the children and young people affected by the policy, and summarising the evidence base</b></p>	<p>As this secondary legislation proposes a short term intervention to avoid the potential for justice social work services being overwhelmed post-crisis, rather than outlining a long term, strategic objective, it was considered that an extensive CRWIA was not required for this policy.</p> <p>Due to this secondary legislation being part of the provisions that were outlined in the Coronavirus (Scotland) Act, the CRWIA that was carried out in relation to the primary legislation also acted as a data source for this CRWIA.</p>
<p><b>Children and young people's views and experiences</b></p>	<p>In developing this legislation, informal consultation took place with a number of key stakeholders including SWS, Community Justice Scotland (CJS), COSLA, Community Justice Scotland, the Criminal Justice Voluntary Sector Forum, ASSIST, Rape Crisis Scotland, Scottish Women's Aid, and Police Scotland.</p> <p>In written correspondence to the Cabinet Secretary for Justice and in a position paper published on 16 July 2020, SWS requested that the Scottish Government consider invoking the powers in the Coronavirus (Scotland) Act 2020 to vary the requirement on orders with UPW or other activity requirements, in order to avoid system failure.</p> <p>CJS have stated in correspondence that varying UPW requirements in a proportionate manner is necessary to alleviate the pressure in justice services and enhances the prospect of JSW and other partners being in a better position to retain the efficacy, trust and credibility of the system.</p> <p>During these consultations with stakeholders, no significant concerns were raised about the potential impact of the provisions on children and young people. UPW - unlike certain other requirements of CPOs such as supervision, programme, or conduct requirements - has no risk management element, and as previously stated, offences relating to domestic abuse, sexual offences, and stalking 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.</p>

<p><b>Key Findings, including an assessment of the impact on children's rights, and how the measure will contribute to children's wellbeing</b></p>	<p>The CRWIA process has given us confidence that varying the UPW requirement of the majority of existing community sentences will not have any significant, adverse or unfair impact on children's rights or wellbeing.</p> <p>The provisions will apply a percentage 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.</p> <p>Further consideration was given regarding the impact of the provisions on the risk to children of individuals subject to UPW or other activity requirements – particularly around the growing body of information indicating a potential increase in domestic abuse during and post-lockdown.</p> <p>There have been significant concerns about the rise in domestic abuse and the impact this has on victims which highlights the need for JSW to be able to continue to contribute to addressing these fundamental issues.</p> <p>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 higher risk or where there are public protection issues, 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.</p> <p>Reducing UPW in a proportionate manner may increase engagement with the overall order and reduce risk of breach. A clear goal which can be completed in a reasonable and realistic timescale may support rehabilitation and counter risk of individuals disengaging.</p> <p>The provisions in these regulations will therefore enable JSW to continue to support and prioritise individuals that have the highest need without compromising risk to the wider community.</p> <p>It is also important to note that JSW have 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 work in collaboration with children and family services to ensure the safety and wellbeing of children.</p> <p>Additionally, at the outset of the pandemic, the Chief Social Work Advisor wrote to all local authority areas to remind them to ensure</p>
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## Children's Rights and Wellbeing Impact Assessment

	<p>records of children residing in clients' households are kept updated and that communication/ joint working with child protection services is robustly maintained.</p> <p>Overall, it is considered that the provisions have no significant risk-related elements for children and young people. Therefore, we do not believe there to be any increased risk to children as a result of reducing the number of hours of UPW requirements.</p>			
<b>Monitoring and review</b>	<p>We anticipate that varying the amount of hours relating to UPW or other activity requirements as part of CPOs will result in JSW operating more effectively when restrictions imposed due to COVID-19 begin to ease.</p> <p>We will monitor the progress of this through regular meetings with SWS and will continue to review the results of the policy decision.</p>			
<b>Bill - Clause</b>	<b>Aims of measure</b>	<b>Likely to impact on . . .</b>	<b>Compliance with UNCRC requirements</b>	<b>Contribution to local duties to safeguard, support and promote child wellbeing</b>
<b>The Community Orders (Coronavirus) (Scotland) Regulations 2021</b>	Intended to ensure that JSW can focus on higher risk, higher priority cases and to help ensure that orders are delivered in a reasonable timescale, even taking account of the 12 month extension to unpaid work.	CRWIA and a range of other assessments (EQIA, BRIA and Islands Impact Assessment have also been prepared)		Effective compliance with these measures will therefore help to keep children and young people <b>safe</b> and <b>healthy</b> .
<b>CRWIA Declaration</b>				
<b>Authorisation</b>				
<b>Policy lead</b>		<b>Date</b>		
Graham Ackerman		25 January 2021		
<b>Deputy Director or equivalent</b>		<b>Date</b>		
Catriona Dalrymple		25 January 2021		