
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under section 10 and paragraph 15(1) of schedule 4 of the Coronavirus (Scotland) Act 2020. Apart from certain exceptions, they vary every unpaid work or other activity requirement which: (1) forms part of a Community Payback Order imposed under section 227A or 227M of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) before these Regulations come into force; and (2) has not been completed by time these Regulations come into force.

An unpaid work or other activity requirement which forms part of a Community Payback Order imposed for domestic abuse, a sexual offence or stalking will not be varied by these Regulations. This includes a Community Payback Order imposed for a number of offences where one or more of those offences is domestic abuse, a sexual offence or stalking.

Regulation 2(2) varies each unpaid work or other activity requirement so that the total number of hours specified in the requirement is reduced by 35%.

Regulation 2(3) provides for the number of hours specified in the requirement to be rounded down to the nearest whole hour where the 35% reduction results in the number of hours containing part of an hour.

Regulation 2(4) ensures that any reduction in the number of hours specified in the requirement does not take the total number of hours below 20, which is the minimum number of hours that can be specified in the unpaid work or other activity requirement by virtue of section 227I(4) of the 1995 Act.

Regulation 2(5) provides for the situation where the 35% reduction in the number of hours specified in the requirement would take the total number of hours below the number of hours of unpaid work or other activity already completed by the individual. In those circumstances, the numbers of hours specified in the requirement is only to be reduced to the hours already undertaken and the requirement is taken to be completed when these Regulations come into force.

Regulation 3 makes supplementary provision to cater for the situation where the 35% reduction in the number of hours specified in the requirement would result in the number of hours allocated to other activity by the responsible officer exceeding the limit on those hours in section 227K(2) of the 1995 Act. In those circumstances, the responsible officer must reduce the hours allocated to other activity in order to comply with the limit in section 227K(2). Where this is not possible due to the number of hours of other activity already completed by the individual, the limit in section 227K(2) is dis-applied, however all remaining hours must be allocated to unpaid work.

Regulation 4 makes transitional provision to cater for the situation where there are ongoing court proceedings for an alleged breach of an order which would be varied by regulation 2 to the effect that the total number of hours is reduced to the number of hours already completed by the individual. In order to prevent the relevant unpaid work or other activity requirement being taken as completed prior to the courts determination on a possible breach of the order, the effect of the variation in regulation 2 is to apply to the order as it has effect after the court’s decision.