

Draft Regulations laid before the Scottish Parliament under paragraph 15(5) of schedule 4 of the Coronavirus (Scotland) Act 2020, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2021 No.

CRIMINAL LAW

**The Community Orders (Coronavirus)
(Scotland) Regulations 2021**

Made - - - - 2021

Coming into force in accordance with regulation 1

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 10 and paragraph 15(1) of schedule 4 of the Coronavirus (Scotland) Act 2020⁽¹⁾ (“the Act”) and all other powers enabling them to do so.

In accordance with paragraph 15(4) of schedule 4 of the Act, the Scottish Ministers are satisfied that: (1) the variation, by these Regulations, of unpaid work or other activity requirements imposed in community payback orders will not make the orders to which these Regulations apply more onerous to comply with; and (2) the making of these Regulations is necessary in response to the effect that coronavirus is having on local authorities.

In accordance with paragraph 15(5) of schedule 4 of the Act, a draft of this instrument has been laid before, and approved by resolution of, the Scottish Parliament.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Community Orders (Coronavirus) (Scotland) Regulations 2021 and come into force immediately after they are made.

(2) In these Regulations—

“the 1995 Act” means the Criminal Procedure (Scotland) Act 1995⁽²⁾,

“the hours already undertaken” means the number of hours of unpaid work or other activity undertaken by an individual in pursuance of an unpaid work or other activity requirement before these Regulations come into force,

“a qualifying community payback order” is a community payback order which—

(a) is imposed on an individual before these Regulations come into force, and

(1) 2020 asp 7.

(2) 1995 c.46; sections 227A to 227ZN were inserted by the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), section 14(1).

- (b) is not imposed, either entirely or partially, for—
- (i) an offence that is aggravated as described in section 1(1)(a) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016⁽³⁾ and has been recorded as such under section 1(5) of that Act,
 - (ii) an offence under section 1(1) of the Domestic Abuse (Scotland) Act 2018⁽⁴⁾,
 - (iii) an offence listed in paragraphs 36 to 60 of Schedule 3 of the Sexual Offences Act 2003⁽⁵⁾,
 - (iv) the offence of stalking as defined in section 39 of the Criminal Justice and Licensing (Scotland) Act 2010⁽⁶⁾,

“the reduced hours” means the number of hours specified in a relevant unpaid work or other activity requirement following the variation of the requirement by regulation 2,

“a relevant unpaid work or other activity requirement” means an unpaid work or other activity requirement which—

- (a) is imposed in a qualifying community payback order, and
 - (b) when these Regulations come into force, has not been completed by the individual,
- “responsible officer” is to be interpreted in the same manner as in section 227C(4) of the 1995 Act,

“the specified hours” means the number of hours specified in a relevant unpaid work or other activity requirement by the court.

Variation of unpaid work requirements

2.—(1) A relevant unpaid work or other activity requirement is varied in accordance with this regulation.

(2) Subject to paragraphs (3) to (5), the specified hours are reduced by 35%.

(3) Where the reduction in the specified hours would result in the reduced hours containing part of an hour, the reduced hours are to be rounded down to the nearest whole hour.

(4) Where the reduction in the specified hours would result in the reduced hours being less than 20, the specified hours are only to be reduced to, or remain at, 20 as the case may be.

(5) Where the reduction in the specified hours would result in the reduced hours being less than the hours already undertaken—

- (a) the specified hours are only to be reduced to the hours already undertaken, and
- (b) as a consequence, the relevant unpaid work or other activity requirement is to be taken as completed when these Regulations come into force.

Supplementary provision

3.—(1) Paragraphs (2) and (3) apply where (by operation of regulation 2) the reduction in the specified hours results in the number of hours allocated to other activity by the responsible officer under section 227K of the 1995 Act exceeding the limit on those hours specified in section 227K(2).

(2) Subject to paragraph (3), the responsible officer must reduce the number of hours allocated to other activity in order to comply with the limit in section 227K(2).

(3) 2016 asp 22.

(4) 2018 asp 5.

(5) 2003 c.42.

(6) 2010 asp 13.

(3) Where the number of hours of other activity already undertaken by the individual before these Regulations come into force means that the responsible officer cannot comply with paragraph (2)—

- (a) the limit in section 227K(2) does not apply, and
- (b) the responsible officer must allocate all hours of unpaid work or other activity yet to be completed by the individual to unpaid work.

Transitional provision: Alleged breach of Community Payback Order

4.—(1) Paragraph (2) applies where—

- (a) a relevant unpaid work or other activity requirement would be varied to the effect that regulation 2(5) applies,
- (b) the court has issued a warrant or citation in accordance with section 227ZC(2) of the 1995 Act in respect of an alleged failure by the offender to comply with a requirement of a qualifying community payback order which includes that relevant unpaid work or other activity requirement, and
- (c) the court has not yet determined in respect of that allegation, whether it is satisfied that the offender has failed without reasonable excuse to comply with a requirement of the qualifying community payback order which includes that relevant unpaid work or other activity requirement.

(2) The variation in accordance with regulation 2 is to be applied to that qualifying community payback order as it has effect after the court's determination.

St Andrew's House,
Edinburgh
Date

Name
A member of the Scottish Government

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.