

**MATERIAL FOR RELEASE**

**FOI: 202100187501 - Correspondence regarding unpaid work hours cut**

**DOCUMENT 1**

**PARTIAL RELEASE**

**From:** [redacted] @gov.scot>  
**Sent:** 13 October 2020 14:42  
**To:** Cabinet Secretary for Justice <CabSecJustice@gov.scot>  
**Subject:** RE: Meeting [redacted on CPO's

Hi [redacted]

[redacted]

“The Cabinet Secretary is keen to finalise the approach to the proposed regulations as soon as possible, given ongoing issues around the delivery of unpaid work.  
[redacted]

[redacted]

Hope this helps.

[redacted]

[redacted] |

Scottish Government | Community Justice Division | [redacted]

**From:** [redacted] > **On Behalf Of** Cabinet Secretary for Justice  
**Sent:** 13 October 2020 12:13  
**To:** [redacted] @gov.scot  
**Subject:** Meeting [redacted] on CPO's

[redacted]

[redacted] are looking for some more info on the purpose of the meeting with [redacted] to discuss CPO's. [redacted]

Can you provide a couple lines for me to go back on to ensure the purpose is accurately fed in?

Thanks

[redacted]

**DOCUMENT 2      PARTIAL RELEASE**

**From:** [redacted] @gov.scot  
**Sent:** 15 October 2020 18:22  
**To:** Cabinet Secretary for Justice <CabSecJustice@gov.scot>  
**Subject:** RE: Meeting with the Cabinet Secretary to discuss CPO's

Thanks [redacted]– that's a useful update from [redacted], and I agree it's really just a call for Cab Sec on whether he still thinks a meeting is necessary. From what I've seen to date, they do appear to be treating this as a high priority.

**From:** [redacted] **On Behalf Of** Cabinet Secretary for Justice  
**Sent:** 15 October 2020 15:05  
**To:** [redacted] @gov.scot  
**Subject:** FW: Meeting with the Cabinet Secretary to discuss CPO's

[redacted]

As discussed, this is with Cab Sec for his views.

[redacted]

[Withheld]

**DOCUMENT 3      PARTIAL RELEASE**

**From:** [redacted]@gov.scot  
**Sent:** 22 October 2020 14:21  
**To:** Cabinet Secretary for Justice <CabSecJustice@gov.scot>  
**Cc:** Dalrymple C (Catriona) <Catriona.Dalrymple@gov.scot>; Rennick NS (Neil) <Neil.Rennick@gov.scot>; [x3] @gov.scot Communications Justice <CommunicationsJustice@gov.scot>; [x7]@gov.scot

**Subject:** Briefing - Cabinet Secretary meeting(s) with justice spokespeople - Various dates

[redacted], all

Please find attached briefing ahead of the Cabinet Secretary's meetings with Rhona Grant and Liam Arthur on Friday 23 October, and John Finnie on Monday 26 October.

Due to these meetings having the same focus, we have provided a singular briefing to be used for all of them.

Kind regards,

[Redacted]



Scottish  
Government  
gov.scot

Community Justice Interventions Unit  
[ ]  
St Andrew's House | Regent Road | Edinburgh |  
EH1 3DG |

**MINISTERIAL ENGAGEMENT BRIEFING: HUMZA YOUSAF**

<b>Engagement title</b>	Meetings with opposition justice spokespeople to discuss issues arising around the delivery of community payback orders
<b>Engagement timing</b>	Various (see "Attendees" section below)
<b>Venue and full address</b>	Teleconference/ videoconference (using webex – link is provided in relevant diary requests)
<b>Background/Purpose</b> include invitation history	[redacted] [redacted]
<b>Attendees</b>	Separate meetings are taking place with the following:  Rhoda Grant (Labour) - 1400, Friday 23 October      Liam McArthur (LD) - 1500, Friday 23 October John Finnie (Greens) - 1400, Monday 26 October  Cllr Parry (COSLA Spokesperson for Community Wellbeing) will attend all meetings, and may have an official in support.
<b>Annexes</b>	<b>Annex A</b> – Background  <b>Annex B</b> – Evidence and representations by external bodies  <b>Annex C</b> – Potential use of regulation-making powers under the Coronavirus (Scotland) Act 2020  <b>Annex D</b> – Engagement with Justice Committee and key stakeholders  <b>Annex E</b> – Letter to the Justice Committee
<b>Official Support</b> include mobile number(s)	<b>Meetings on Friday:</b> [redacted] [ ]  <b>Meeting on Monday:</b> [redacted ]

### Background

#### *Purpose of meetings*

- [redacted]

#### *Difficulties arising in relation to the provision of community payback orders*

- As a result of coronavirus, local authority justice social work services have experienced significant difficulties in continuing to implement community orders. The effects of coronavirus have had a particular impact on the delivery of unpaid work, as this is typically delivered in groups.
- Capacity to deliver community payback orders has been significantly affected by measures required to protect the health and wellbeing of staff and individuals on orders, including compliance with guidance on physical distancing and self-isolation in particular.
- The Coronavirus (Scotland) Act 2020 extended all unpaid work 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 justice social work services to safely suspend unpaid work programmes during lockdown without this resulting in any orders being inadvertently breached as a result.
- This immediate step of extending all unpaid work and other activity requirements has been successful in ensuring that justice social work could continue to function effectively in the short to medium term. However, capacity within justice social work to deliver unpaid work will remain reduced for as long as physical distancing and other restrictions remain, while court business is now beginning to increase towards more normal levels.
- As a result, there is a high risk that the volume of outstanding unpaid work will grow significantly over time (made up of existing orders; untried cases accruing in the court system since lockdown; and new cases arising from recent or future offences), increasing pressure on justice social work and resulting in an inability to deliver relevant orders within reasonable timescales.
- Social Work Scotland has raised significant concerns about the deliverability of outstanding unpaid work requirements. They have advised that the capacity to deliver unpaid work will be significantly reduced for some time, and have

requested that action be taken by the Scottish Government to ensure the continued effective operation of the community justice system (see **Annex B**).

## **ANNEX B**

### **Evidence and representations by external bodies**

- Social Work Scotland published a position paper, '*Reducing the backlog of unpaid work hours: Coronavirus (Scotland) Act 2020*', on 15 July 2020 which set out its concerns. They also wrote to you separately requesting that action be taken to proactively address the pressures faced in managing the backlog, specifically requesting that regulations be brought forward under the Coronavirus (Scotland) Act 2020 to reduce the number of outstanding unpaid work hours (see **Annex C**).
- It is their view that taking no action would result in justice social work becoming overwhelmed, as individual orders will likely not be completed within court-imposed timescales and the overall number of outstanding hours will continue to accumulate.
- Difficulties will become particularly acute if capacity for court business outstrips justice social work capacity, as new orders will not be able to commence promptly.
- This could potentially undermine both public and judicial confidence in the credibility of community orders, should offenders be required to wait for significant periods of time before starting to serve their sentence.
- Social Work Scotland also wrote to the Justice Committee regarding these issues where they raised specific concerns about the challenges and complexities around the restarting (and continuation of) unpaid work and justice social work's capacity to deliver this.
- In addition, correspondence from COSLA and Community Justice Scotland has been received, both of which express concerns, similar to those raised by Social Work Scotland, regarding justice social work capacity to deliver outstanding unpaid work hours safely and in a timely manner.
- COSLA has called on the Scottish Government to consider seriously the proposals put forward by Social Work Scotland, and Community Justice Scotland has indicated its support for action to be taken.
- Officials have weekly meetings with Social Work Scotland to discuss ongoing justice social work issues and data collected from local authorities relating to

outstanding unpaid work hours. Current estimates reveal that there are around 720,000 unpaid work hours outstanding (it should be noted that this total figure is not in itself the problem (it is not unusual to have this many unpaid work hours outstanding); rather, it is the significantly reduced capacity within justice social work which is causing difficulties).

### **Potential use of regulation-making powers under the Coronavirus (Scotland) Act 2020**

- In addition to extending all unpaid work requirements by 12 months, the Coronavirus (Scotland) 2020 Act introduced powers for Scottish Ministers to vary or revoke requirements in community payback orders and drug treatment and testing orders.
- 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 Social Work Scotland, and to alleviate the pressure on justice social work services, the Scottish Government is considering whether it may be necessary to use these powers to reduce, on a limited and proportionate basis, the overall volume of outstanding unpaid work in order to create the required capacity to ensure that the community justice system can continue to operate effectively.
- The aim of any regulations would be to enable justice social work services to complete existing orders within timescales expected by courts and ensure any new orders that are imposed can commence promptly. This is clearly important for all those involved, including victims of crime, in ensuring that justice is carried out swiftly and effectively and that confidence in community orders is retained.
- It should be noted that the focus of this work is on unpaid work requirements only; there is no intention to consider altering any other aspects of community orders, including those involved in managing potential risk to individuals or the wider community such as supervision, programme, or conduct requirements.

#### *Further information on likely approach (if required)*

- Should regulations be brought forward, the most likely approach would be to apply a percentage reduction to the unpaid work or other activity requirements imposed as part of existing community payback orders (for example, regulations might provide that the number of hours of unpaid work or other activity specified in community payback orders which are not complete on the day the regulations come into force is reduced by 30%).

- Following engagement with stakeholders (see **Annex D**), consideration is also being given to whether steps should be taken to either exclude certain offence types – particularly those relating to domestic abuse and sexual offences - from any regulations [redacted]

## ANNEX D

### Engagement with Justice Committee and key stakeholders

- You wrote to the Justice Committee in July (see **Annex E**) regarding the correspondence and position paper received from Social Work Scotland. In your letter to the Committee you outlined that consideration was being given as to whether the regulation-making powers in the Coronavirus (Scotland ) Act 2020 may need to be used to reduce the volume of outstanding unpaid work hours in order to ensure that the justice system can continue to operate efficiently and effectively.
- You indicated in your letter to the Committee that options, including the use of regulations, to address the backlog of unpaid work hours would be considered rapidly and in discussion with key stakeholders, including victim support organisations.
- Early informal engagement about the use of the regulation making powers took place with SWS, COSLA, and Community Justice Scotland, none of whom identified any concerns.
- The proposals were also discussed with victim support organisations (as part of the SG's regular COVID meeting with victim groups), and an update was circulated to the Victims Organisations Collaboration Forum Scotland for views in July. [redacted]

## Letter to Justice Committee

Rùnaire a' Chaibineit airson Ceartais  
Cabinet Secretary for Justice  
Humza Yousaf BPA/MSP



F/T: 0300 244 4000  
E: scottish.ministers@gov.scot

Margaret Mitchell MSP  
Convener  
Justice Committee

20 July 2020

Dear Margaret

### **Correspondence from Social Work Scotland and publication of position paper**

I am writing to share with the Committee correspondence that I have received from James Maybee, Chair of Social Work Scotland's (SWS) Justice Standing Committee. In the context of the COVID-19 pandemic, this raises significant concerns about the capacity of justice social work (JSW) services to deliver unpaid work (UPW) requirements in community payback orders, and requests that action be taken to proactively address the pressures faced in managing these requirements. Alongside this correspondence, SWS has included a position paper, which has now been published, outlining these concerns in more detail. I attach both a copy of the letter and the position paper for reference.

I am aware that SWS wrote separately to the Committee last month, which you asked for my views on, and a response addressing the specific issues in that letter will be provided shortly.

In its position paper, SWS explains that there are currently around 700,000 hours of UPW outstanding across all local authorities in Scotland. SWS expresses serious concerns about the deliverability of these hours, particularly as a result of physical distancing measures which reduce capacity to deliver UPW safely. Group work activity is the most common form of UPW delivery across Scotland, and physical distancing measures place significant constraints on this, with staffing ratios needing to change, and other logistical restrictions in relation to travel and use of workshop spaces.

SWS also expresses concern that as courts begin to process the significant backlog of outstanding business, this will inevitably generate new CPOs with unpaid work or other activity requirements, which will further impact on the capacity of JSW services.

SWS has called on the Scottish Government to take action to reduce the volume of UPW hours outstanding in order to enable JSW to progress both new and outstanding orders in a timely manner. In its view, taking no action presents a significant risk to the continued effective operation of the community justice system.

I would note that I have also received correspondence from COSLA and Community Justice Scotland, both of which express concerns, similar to those raised by SWS, regarding JSW capacity to deliver outstanding UPW hours safely and in a timely manner. COSLA has called on the Scottish Government to consider seriously the proposals put forward by SWS, and Community Justice Scotland has indicated its support for action to be taken. I attach with this letter a copy of the correspondence received from COSLA and Community Justice Scotland, for reference.

The immediate issues faced by JSW as a result of the pandemic, particularly around the delivery of UPW, were apparent some months ago. As the Committee will be aware, Parliament acknowledged these issues through the Coronavirus (Scotland) Act 2020, which extended the timescales for all UPW and other activity requirements (and required any new orders to comply with the same timescales), enabling local authorities to safely suspend UPW during lockdown without this resulting in any orders being inadvertently breached as a result. In conjunction with the enormous amount of work carried out by local authorities and Social Work Scotland in adopting a flexible, risk based approach, this was successful in ensuring that JSW could continue to function effectively in the short to medium term. However, SWS has made clear that as we move through the pandemic recovery phase, the challenges for delivering UPW are immense.

SWS reflects the views and experience of social work professionals across Scotland, who play an absolutely vital role in delivering community sentences, keeping our communities safe, and addressing offending and its causes. Given that, the issues raised in its letter and position paper are extremely concerning, not least the potential risk to the operation of the community justice system.

As a result, I am now considering whether further action may be required, as suggested by SWS, to alleviate the pressure on JSW services across all local authorities. This includes consideration as to whether the regulation-making powers in the Coronavirus (Scotland) Act 2020 (which enable the postponement or variation of community orders in certain circumstances) may need to be used, on a proportionate and limited basis, to reduce the volume of outstanding UPW hours in order to ensure that the justice system can continue to operate efficiently and effectively.

Should this be necessary, a careful balance will need to be struck so that victims of crime, the wider public, and the judiciary continue to be confident that community orders are an effective way for individuals to pay back to their communities, while taking into account the challenges faced by JSW and the wider justice system.

It is therefore imperative that options to address this situation are considered rapidly but also in discussion with key stakeholders, including victim support organisations, to inform our deliberations. No decision has been made yet, and any action to vary court orders will not be taken lightly.

However, if it appears that changes are needed to ensure the system is not overwhelmed and that orders can be started and completed without significant delays, it is likely the necessary regulations would be laid in Parliament after the summer recess under the affirmative procedure and subject, of course, to parliamentary scrutiny.

While work on this is ongoing, I can assure the Committee that our focus is on unpaid work and other activity requirements only; there is no intention to consider altering any other aspects of community orders, including those involved in managing potential risk to individuals or the wider community such as supervision, programme, or conduct requirements. I will keep the Committee informed should a decision be made to introduce regulations in due course.

I hope this information is helpful.



**HUMZA YOUSAF**

**DOCUMENT 4      CPO info ahead of meeting at 1500 with Liam McArthur**

**PARTIAL RELEASE**

**From:** [redacted] @gov.scot  
**Sent:** 23 October 2020 14:53  
**To:** Cabinet Secretary for Justice <CabSecJustice@gov.scot>  
**Cc:** [redacted] @gov.scot>  
**Subject:** CPO info ahead of meeting at 1500 with Liam McArthur  
**Importance:** High

Hi

Can you pass the info below to Cab Sec ahead of the call with Liam McArthur at 1500? A things things came up during the call with Rhoda Grant, including some Qs from Cab Sec, which I've now checked.

1) CPOs by offence type

This is a rough breakdown of what percentage of CPOs with UPW result from which offence types (and the second column shows their share of total hours imposed).

Main crime type	Percentage of total CPOs with unpaid work	Percentage of total hours given as part of CPOs with unpaid work
Non-sexual crimes of violence	3.5%	5.3%
Common assault	19.6%	20.7%

Sexual crimes	2.7%	3.6%
Housebreaking	1.0%	1.2%
Other theft	3.3%	3.3%
Shoplifting	4.2%	2.7%
Other dishonesty (inc. fraud)	2.7%	3.2%
Fire-raising, vandalism etc.	3.3%	3.4%
Handling weapons	3.4%	3.8%
Crimes against public justice	9.8%	8.5%
Drugs	7.6%	8.0%
Breach of the peace	19.5%	16.8%
Other crimes and offences	19.5%	19.4%
Domestic abuse (included across various crime types above)	18.3%	17.7%

## 2) Gender split

You asked about the % of CPOs imposed on women offenders - the split is 85% men, 15% women (see excerpt from draft EQIA below for more info).

While the percentage of men and women convicted of a crime and receiving community sentences 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 a crime.

Men are also more likely than women to receive a custodial sentence. Data from Criminal Proceedings in Scotland 2018-19 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 all 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 is 88% male and 12%, female and for sexual crimes 97% male and 3% female, compared to 75% male and 25% female for crimes of dishonesty.

### Impact on women

[redacted] [30(b)(i)] most CPOs are imposed on men, and those who would benefit the most are those who have the most hours imposed, which again tends to be men (who commit the more serious offences, generally speaking).

[redacted] |

## DOCUMENT 5      RELEASE OF ELEMENTS IN SCOPE

Cabinet Secretary for Justice

### PRE-MEETING WITH LINDSAY MONTGOMERY AND KARYN McCLUSKEY PRIOR TO COMMUNITY JUSTICE SCOTLAND BOARD MEETING ON 4 NOVEMBER 2020

WEDNESDAY 28 OCTOBER 2020

[RELEVANT SECTION ONLY]

UNPAID WORK, [Not in scope]

#### Background

- CJS has suggested that the following question may arise in relation to proposals currently under consideration to reduce the outstanding volume of unpaid work hours in CPOs using powers in the Coronavirus (Scotland) Act 2020, [not in scope]:

*3) Does he plan to take forward the SWS proposals - which we strongly supported - to reduce the very large numbers of outstanding unpaid work orders?*

#### Lines to take

##### *Unpaid work*

- In order to address the concerns raised by Social Work Scotland (and CJS), and to alleviate the pressure on justice social work services, the Scottish Government is considering whether it may be necessary to use these powers to reduce, on a limited and proportionate basis, the overall volume of outstanding unpaid work in order to create the required capacity to ensure that the community justice system can continue to operate effectively.
- The aim of any regulations would be to enable justice social work services to complete existing orders within timescales expected by courts and ensure any new orders that are imposed can commence promptly. This is clearly important for all those involved, including victims of crime, in ensuring that justice is carried out swiftly and effectively and that confidence in community orders is retained.
- Should regulations be brought forward, the most likely approach would be to apply a percentage reduction to the unpaid work or other activity requirements imposed as part of existing community payback orders (for example, regulations might provide that the number of hours of unpaid work or other activity specified in community payback orders which are not complete on the day the regulations come into force is reduced by 30%).
- We are aware of the urgency of this issue, and a decision will be made as quickly as possible.

## DOCUMENT 6      RELEASE ELEMENTS IN SCOPE

Cabinet Secretary for Justice

### COMMUNITY JUSTICE SCOTLAND BOARD MEETING WEDNESDAY 4<sup>th</sup> NOVEMBER 2020

#### UNPAID WORK, [NOT IN SCOPE]

##### Background

- CJS has suggested that the following question may arise in relation to proposals currently under consideration to reduce the outstanding volume of unpaid work hours in CPOs using powers in the Coronavirus (Scotland) Act 2020, [Not in scope]:

*3) Does he plan to take forward the SWS proposals - which we strongly supported - to reduce the very large numbers of outstanding unpaid work orders?*

##### Lines to take

###### *Unpaid work*

- In order to address the concerns raised by Social Work Scotland (and CJS), and to alleviate the pressure on justice social work services, the Scottish Government is considering whether it may be necessary to use these powers to reduce, on a limited and proportionate basis, the overall volume of outstanding unpaid work in order to create the required capacity to ensure that the community justice system can continue to operate effectively.
- The aim of any regulations would be to enable justice social work services to complete existing orders within timescales expected by courts and ensure any new orders that are imposed can commence promptly. This is clearly important for all those involved, including victims of crime, in ensuring that justice is carried out swiftly and effectively and that confidence in community orders is retained.
- Should regulations be brought forward, the most likely approach would be to apply a percentage reduction to the unpaid work or other activity requirements imposed as part of existing community payback orders (for example, regulations might provide that the number of hours of unpaid work or other activity specified in community payback orders which are not complete on the day the regulations come into force is reduced by 30%).
- We are aware of the urgency of this issue, and a decision will be made as quickly as possible.

**DOCUMENT 7 PARTIAL RELEASE – RELEVANT MATERIAL RELEASED**

**BRIEFING FOR MEETING WITH SHERIFF DUFF, JUDICIAL INSTITUTE – 19 NOVEMBER**

Cabinet Secretary for Justice

**MEETING WITH SHERIFF ALISTAIR DUFF**

**THURSDAY 19 NOVEMBER 2020**

<b>Key Message</b>	Value of judicial perspective as we work to promote and expand the availability of effective community interventions
<b>Who</b>	Sheriff Alistair Duff, Judicial Institute
<b>What</b>	Informal discussion on current issues relating to justice matters.
<b>Why</b>	Opportunity to hear informal views and consider any potential implications for judiciary and public and judicial confidence.
<b>When</b>	3.00pm Thursday 19 November 2020  Microsoft Teams meeting <b>Join on your computer or mobile app</b>  SCOTS Connect
<b>Official Support</b>	Cat Dalrymple, Deputy Director, Community Justice Division [redacted] - Community Justice Division
<b>Policy Contact</b>	[redacted]
<b>Briefing Contents</b>	Agenda – <b>ANNEX A</b>  Background and Suggested Points for Discussion – <b>ANNEX B</b>

**Copy to:**

DG Education, Communities and Justice  
Katherine Peskett, Director of Justice  
Stephen Pathirana, Director of Justice  
Cat Dalrymple, Deputy Director, Community Justice  
[ ], Communications Justice  
Communications Justice

, Community Justice [6 officials – names removed]

## **[RELEVANT SECTIONS ONLY]**

### Use of Community Interventions/Orders

#### **Background**

Sustainably reducing the use of imprisonment and increasing the use of more effective community interventions is absolutely key if we are to avoid the prison population rising back to pre-pandemic levels – or beyond.

We know that short prison sentences in particular provide limited opportunity to rehabilitate individuals or reduce the risk of reoffending – and that individuals released from a custodial sentence of 12 months or less are reconvicted almost twice as often as those given a CPO.

There are proposals currently under consideration to reduce the outstanding volume of unpaid work hours in CPOs using powers in the Coronavirus (Scotland) Act 2020, [NOT IN SCOPE].

The Scottish Government is considering whether it may be necessary to use these powers to reduce, on a limited and proportionate basis, the overall volume of outstanding unpaid work in order to create the required capacity to ensure that the community justice system can continue to operate effectively.

The aim of any regulations would be to enable justice social work services to complete existing orders within timescales expected by courts and ensure any new orders that are imposed can commence promptly. This is clearly important for all those involved, including victims of crime, in ensuring that justice is carried out swiftly and effectively and that confidence in community orders is retained.

Should regulations be brought forward, the most likely approach would be to apply a percentage reduction to the unpaid work or other activity requirements imposed as part of existing community payback orders (for example, regulations might provide that the number of hours of unpaid work or other activity specified in community payback orders which are not complete on the day the regulations come into force is reduced by 30%).

We are aware of the urgency of this issue, and a decision will be made as quickly as possible.

#### **Discussion Points:**

- We extended the presumption against short sentences and there are challenges delivering UPW at this time. What are the barriers and opportunities around community interventions from your perspective (can't speak on behalf of judiciary)?
- Is consistency of provision an issue? If so, what can we do to address this?
- How best can we support judicial engagement locally to increase confidence in community interventions.



The professional association for  
social work and social workers

Scottish Association of Social Work  
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67 Shandwick Place,  
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Humza Yousaf MSP, Cabinet Secretary for Justice  
The Scottish Government  
St Andrew's House  
Regent Road  
Edinburgh  
EH1 3DG  
Email: [scottish.ministers@gov.scot](mailto:scottish.ministers@gov.scot)

19 November 20

Dear Cabinet Secretary,

**RE: Impact of the recovery and restart of the justice system on social work**

The Scottish Association of Social Work (SASW) is the part of the British Association of Social Workers, the largest professional body for social workers in the UK. BASW UK has 21,000 members employed in frontline, management, academic and research positions in all care settings. There are 10,943 registered social workers in Scotland around 1,500 of whom are SASW members. This comprises staff working in local government and the independent sector, across health and social care, education, children and families, justice services, as well as a growing number of independent practitioners.

SASW's key aims are:

- Improved professional support, recognition, and rights at work for social workers
- Better social work for the benefit of people who need our services, and
- A fairer society

I write on behalf of our members working in justice service delivering early intervention measures such as diversion from prosecution and structured deferred sentences, undertaking assessments and reports for our Courts and arranging and supervising community payback orders (CPOs) including those with requirements for unpaid work.

Unpaid work (UPW) is a punishment. It is not the vehicle to supervise people who present risk (that would be a requirement of supervision). It is not used to support people with mental health, substance, or alcohol needs (treatment requirements and supervision to do this). It does not offer the structured learning and challenge for sex offences or people who have committed domestic abuse that a programme requirement does.

Justice social work has no control over the level of demand for the services it has responsibility for. Whilst the extension to timescales of CPOs with a condition of unpaid work (UPW) was a positive move, there are currently over 700,000 hours of unpaid work still outstanding. The need for physical distancing has reduced the capacity of justice social work departments to deliver UPW and other CPO conditions within the usual timescales. This is not going to resolve in the foreseeable future.

As the Courts restart, further demands in terms of services to the Court and in the delivery of CPOs also restart but with significantly less ability than before the pandemic to deliver these.

Whilst teams have made the adjustments around physical distancing that are possible in order to keep delivering, this is not enough to work through the back log and to deliver new orders.

Justice social workers do not want to have to manage the flow of orders by the using of waiting lists. This would be demoralising for victims of crime and, where the duration of an order might extend, risks people on orders breaching through poor motivation.

Whilst the restarting of the Courts will no doubt create pressures within departments and impact on the wellbeing of our members, our key concerns is the potential that slow orders, disconnected by periods of time from the judicial process will reduce the public's and courts' trust, leading to a reduction in use of CPOs and, potentially, an increase in people being sent to prison.

I know you will agree that this would not be an acceptable outcome given our place as one of the countries in Western Europe with the highest rates of custody for its citizens. We recognise that any decision to remove UPW hours will be intensely unpopular with some groups of people and that this is especially politically sensitive in the run up to the Parliamentary Elections next May.

Justice social workers have worked through the pandemic to supervise people who present the greatest risk and to keep families and communities safe. There is no straightforward way to increase the capacity of the system. **Therefore, our professional recommendation to you is that a reduction in outstanding unpaid work hours is the most effective and the safest way to ensure that justice social work and the wider justice system continues to function effectively.**

In the meantime, SASW commits to engaging and supporting other parts in the justice system and contributing in whatever way it can to Government modelling exercises in anticipation of greater Court activity.

Yours sincerely,

**Alison Bavidge, National Director, Scottish Association of Social Work  
Jude Currie, Chair, National Standing Committee, Scottish Association of Social Work**



Response-2020011  
7482.pdf

- Cabinet Secretary reply to SASW - 7 December 2020

## **DOCUMENT 9 PARTIAL RELEASE**

### **Cabinet Secretary call with [redacted] re regulations to vary UPW – 3 December 2020**

#### **Suggested points for call:**

- The difficulties faced by justice social work in delivering community orders during the pandemic were acknowledged by the Scottish Parliament through the Coronavirus (Scotland) Act 2020, which extended timescales for completion of unpaid work and created new powers enabling community orders to be postponed or varied if necessary.
- Following significant concerns raised by Social Work Scotland during the summer, I (Cab Sec) wrote to the Justice Committee to confirm that consideration was being given to whether these powers may need to be used, on a proportionate and limited basis, with regard to unpaid work.
- I agree that action is necessary to ensure existing and new orders can be delivered effectively and to mitigate the risk that the system becomes completely overwhelmed. This would be done to ensure the justice system can operate effectively, which is in the interests of the justice system and individuals, including victims.
- A number of policy options have been proposed to remove outstanding UPW hours including a % based reduction of each individual's imposed hours (35% is most likely) or a % reduction of each individual's imposed hours, but with exclusions of individuals with a domestic abuse aggravator or sexual crimes. An option of a % reduction of each individual's imposed hours but with the maximum reduction in hours for any individual of 50 hours is also under consideration.
- I was and remain sympathetic to the regulations making exclusions for individuals whose order was imposed as a result of sexual offending or domestic abuse (or more broadly associated with gender based violence). [redaction – 36(1)]

- In addition to the time pressure caused by the end of the parliamentary session, there are growing challenges around relations with local authority justice social work services – given that the issues around UPW were first raised some months ago - and there are significant concerns about capacity to ensure effective supervision as well as deliver UPW.
- While a decision on the regulations remains contingent [redacted], officials have engaged with Parliamentary Liaison on potential dates if regulations are approved. The provisional bid is timetabled for laying on 29 January which is the earliest date that could now be offered and this would allow scrutiny before the pre-election period with the regulations expected to be in force in March (subject to Parliamentary approval).
- Even based on this date, allowing for finalisation of policy and supporting documents, engagement with stakeholders and styling the timing gets challenging if a decision cannot be made in early December.
- There is also the risk the Coronavirus Act itself and the powers to vary orders may not be available after the election period so to help ensure community justice delivery partners can adapt and prepare for further increases in court business, it remains high priority to look to bring forward regulations to vary unpaid work requirements in January, which would require a decision on the policy for the regulations by 7 December to keep to that timetable.

[redacted]

**DOCUMENT 10 - FOLLOW UP TO CALL WITH [30(c)]  
PARTIAL RELEASE**

**From:** [redacted] @gov.scot>

**Sent:** 03 December 2020 09:48

**To:** Cabinet Secretary for Justice <CabSecJustice@gov.scot>

**Cc:** [redacted] @gov.scot>; [redacted] @gov.scot>; McFarlane J (John) <John.McFarlane@gov.scot>; Dalrymple C (Catriona) <Catriona.Dalrymple@gov.scot>

**Subject:** RE: Call [redacted] re CPOs - Follow Up

[redacted]

Thanks, that's helpful. We'll take forward those discussions, and we're also planning to work with internal colleagues to explore what data / research on reporting issues could be utilised – while it was acknowledged on the call that we don't necessarily require to have a statistical basis for this, any relevant information would clearly be very helpful in further articulating an argument around impact on reporting rates.

We're also going to proceed with preparatory work on amending the draft regulations – while we'll need to consider [redacted] in due course, given the timing concerns we'll do what we can in the meantime to ensure that these can be completed as soon as possible once the final approach has been agreed with Cab Sec.

[redacted]

[redacted]

Scottish Government | Community Justice Division | [ ]

**From:** [redacted]@gov.scot **On Behalf Of** Cabinet Secretary for Justice

**Sent:** 03 December 2020 09:38

**To:** [redacted - Section 38(1)(b) – 3 officials @gov.scot McFarlane J (John) <[John.McFarlane@gov.scot](mailto:John.McFarlane@gov.scot)>

**Cc:** Cabinet Secretary for Justice <[CabSecJustice@gov.scot](mailto:CabSecJustice@gov.scot)>

**Subject:** Call [redacted] re CPOs - Follow Up

Good Morning All

Following the call with [redacted] please see note from the Cabinet Secretary below

---

On the back of [redacted] re: CPOs, my expectation is that Officials will begin a discussion with Scottish Women's Aid, RCS and Police Scotland (Domestic Abuse Unit) and take a view from them about the possible effects to reporting DA/Sexual Offences if there is a reduction to the UPW hours of an offender for those crimes. They should also pay particular heed to our obligations under the Istanbul Convention.

[redacted]

Officials should undertake these discussions at pace.

HY

---

Happy to chat about anything arising.

Regards

[ ]

[redacted] Private Secretary to Cabinet Secretary for Justice, Humza Yousaf  
[CabSecJustice@gov.scot](mailto:CabSecJustice@gov.scot)  
0131 244 4091  
[ ]

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## DOCUMENT 11 PARTIAL RELEASE

**From:** [redacted]@gov.scot> **On Behalf Of** Cabinet Secretary for Justice  
**Sent:** 10 December 2020 14:01  
**To:** [redacted]@gov.scot>; Cabinet Secretary for Justice <[CabSecJustice@gov.scot](mailto:CabSecJustice@gov.scot)>; [ ]@gov.scot>; [redacted]@gov.scot>; McFarlane J (John) <[John.McFarlane@gov.scot](mailto:John.McFarlane@gov.scot)>  
**Cc:** [ ]@gov.scot>; Dalrymple C (Catriona) <[Catriona.Dalrymple@gov.scot](mailto:Catriona.Dalrymple@gov.scot)>; [ ]@gov.scot>  
**Subject:** RE: Call [redacted] re CPOs - Follow Up

[redacted],

Mr Yousaf has noted the below.

[redacted - Section 38(1)(b)]

Deputy Private Secretary – Humza Yousaf MSP, Cabinet Secretary for Justice –  
1W.11, St Andrews House, Regent Road, Edinburgh, EH1 3DG - 0131 244 2553, [ ]  
] [CabSecJustice@gov.scot](mailto:CabSecJustice@gov.scot)

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**From:** [redacted - Section 38(1)(b)] @gov.scot  
**Sent:** 09 December 2020 12:10  
**To:** Cabinet Secretary for Justice <[CabSecJustice@gov.scot](mailto:CabSecJustice@gov.scot)>; [ 2x ]@gov.scot ;  
McFarlane J (John) <[John.McFarlane@gov.scot](mailto:John.McFarlane@gov.scot)>  
**Cc:** [ ] @gov.scot Dalrymple C (Catriona) <[Catriona.Dalrymple@gov.scot](mailto:Catriona.Dalrymple@gov.scot)>; [ ]@gov.scot  
**Subject:** RE: Call [redacted] re CPOs - Follow Up

[redacted]

Just a short update to confirm that meetings are progressing with Police Scotland and victims organisations and the regulations and accompanying documents are being revised for consideration. We are not able to meet with VSS this week but other calls have either taken place or are happening over the next day and we will speak with VSS as soon as it can be arranged. [OUT OF SCOPE]

We intend to provide advice and relevant supporting documents (in particular the draft policy note) in a close to final form to support a decision on the policy next week. There will still be scope for refinement of documents following any feedback.

From calls so far, there is broad agreement that there are a particular set of issues which impact on reporting of domestic abuse and sexual offences and not excluding these offences carries risk of impacting on reporting, especially when aspects of victim trust and confidence in the justice system is fragile.

I hope this helps in the meantime.

[redacted]

## DOCUMENT 12 PARTIAL RELEASE

Briefing - Cabinet Secretary meeting(s) with justice spokespeople - Various dates 4 Dec emails

**From:** [redacted] **On Behalf Of** Cabinet Secretary for Justice

**Sent:** 04 December 2020 09:29

**To:** [redacted]@gov.scot>; Cabinet Secretary for Justice <CabSecJustice@gov.scot>

**Cc:** Director of Justice <DirectorofJustice@gov.scot>; Dalrymple C (Catriona) <Catriona.Dalrymple@gov.scot>; [ ]@gov.scot>; [ ]@gov.scot>; [ ]@gov.scot>; [ ]@gov.scot>; Head of Justice Analytical Services <headofjas@gov.scot>; [x3]@gov.scot>; McFarlane J (John) <John.McFarlane@gov.scot>; [ ]@gov.scot>

**Subject:** RE: Briefing - Cabinet Secretary meeting(s) with justice spokespeople - Various dates

[redacted],

Mr Yousaf has noted and commented that once we come to a definitive course of action, particularly in relation to exemptions, it would be helpful to discuss the comms plan.

Many thanks,

[redacted]

[ ]

Deputy Private Secretary – Humza Yousaf MSP, Cabinet Secretary for Justice – 1W.11, St Andrews House, Regent Road, Edinburgh, EH1 3DG - 0131 244 2553, [ ] CabSecJustice@gov.scot

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 **The Scottish Government**

**From:** [redacted]@gov.scot>

**Sent:** 01 December 2020 15:15

**To:** Cabinet Secretary for Justice <CabSecJustice@gov.scot>

**Cc:** Director of Justice <DirectorofJustice@gov.scot>; Dalrymple C (Catriona) <Catriona.Dalrymple@gov.scot>; [x4]@gov.scot>; Head of Justice Analytical Services <headofjas@gov.scot>; [x3]@gov.scot McFarlane J (John) <John.McFarlane@gov.scot>; [ ]@gov.scot

**Subject:** RE: Briefing - Cabinet Secretary meeting(s) with justice spokespeople - Various dates

[redacted]

Thanks for the email below. In terms of parliamentary engagement and planning, we have been liaising with the Parliamentary Liaison team to ensure a slot is available which would allow scrutiny and approval of the regulations before the pre-election period once a decision is made on the policy, [redacted]. [redacted]

I have provided further detail below on the expected timing, ongoing communications planning, and parliamentary handling for the Cabinet Secretary's consideration.

### Timeline

A parliamentary slot has been secured for 29 January 2021 to lay the community order regulations before Parliament. We have developed an indicative timetable on the basis that a decision on the regulations to be taken forward will be reached in the first week in December. [redacted]

Should we have confirmation to proceed with the regulations by 7 December, our intention would be to submit the draft SSI and the accompanying documents to the Cabinet Secretary by 16 December so that sign-off can be secured prior to the December recess (ideally by December 23). [redacted]

### Comms / engagement

Initial discussions have taken place with SG comms colleagues around potential communications activity prior to (and to coincide with) the laying of the regulations in Parliament. [redacted]

[redacted]

### Parliamentary handling

As noted, the Cabinet Secretary has already met with cross party justice spokespeople to explain the rationale for reducing the amount of outstanding unpaid work hours. He also wrote to the Justice Committee in July, where he committed to writing to them again when a decision was made on the regulations. Once a final approach has been decided, we will draft a letter for the Cabinet Secretary to send to the Justice Committee, fulfilling this commitment. [redacted]

I hope this is helpful. We have provided some briefing points separately to support the call with [redacted] later this week.

[redacted]

**From:** [redacted] **On Behalf Of** Cabinet Secretary for Justice

**Sent:** 23 November 2020 15:04

**To:** [ ]@gov.scot Cabinet Secretary for Justice <[CabSecJustice@gov.scot](mailto:CabSecJustice@gov.scot)>

**Cc:** Director of Justice <[DirectorofJustice@gov.scot](mailto:DirectorofJustice@gov.scot)>; Dalrymple C (Catriona) <[Catriona.Dalrymple@gov.scot](mailto:Catriona.Dalrymple@gov.scot)>; [x4 ]@gov.scot; Head of Justice Analytical Services <[headofjas@gov.scot](mailto:headofjas@gov.scot)>; [x3]@gov.scot McFarlane J (John) <[John.McFarlane@gov.scot](mailto:John.McFarlane@gov.scot)>; [ ]@gov.scot

**Subject:** RE: Briefing - Cabinet Secretary meeting(s) with justice spokespeople - Various dates

[redacted]

The Cabinet Secretary has noted and asked for a call with [redacted] to be arranged. We will take this forward.

Is there a parliamentary and comms handling plan that you can share with Mr Yousaf? [redacted]

Thanks

[redacted]

[redacted]

Private Secretary to Cabinet Secretary for Justice, Humza Yousaf

[CabSecJustice@gov.scot](mailto:CabSecJustice@gov.scot)

0131 244 4091

[ ]

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#### **Out of Hours Advice**

The Justice Private Office Team do not work a shift pattern. The mailbox is actively monitored between 0830 and 1830 Monday to Friday. However, if you require help or an immediate response out with these times or over the weekend please phone or text [ ] and we will be happy to assist.

**From:** [redacted] **On Behalf Of** Cabinet Secretary for Justice

**Sent:** 29 October 2020 14:06

**To:** Cabinet Secretary for Justice <[CabSecJustice@gov.scot](mailto:CabSecJustice@gov.scot)>; [ ]@gov.scot

**Cc:** Dalrymple C (Catriona) <[Catriona.Dalrymple@gov.scot](mailto:Catriona.Dalrymple@gov.scot)>; Rennick NS (Neil) <[Neil.Rennick@gov.scot](mailto:Neil.Rennick@gov.scot)>; [x3] @gov.scot Communications Justice <[CommunicationsJustice@gov.scot](mailto:CommunicationsJustice@gov.scot)>; [x7]@gov.scot

**Subject:** RE: Briefing - Cabinet Secretary meeting(s) with justice spokespeople - Various dates

[redacted]

[redacted]

Grateful if you can consider and provide further advice or re-send earlier advice that covers this point.

It may also be helpful if you could provide details of any timetables that need to be considered for bringing forward any Regulations.

Many thanks  
[ ]

[redacted]

Private Secretary to Cabinet Secretary for Justice, Humza Yousaf

[CabSecJustice@gov.scot](mailto:CabSecJustice@gov.scot)

0131 244 4091

[ ]

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The Justice Private Office Team do not work a shift pattern. The mailbox is actively monitored between 0830 and 1830 Monday to Friday. However, if you require help or an immediate response out with these times or over the weekend please phone or text [ ] and we will be happy to assist.

## DOCUMENT 13

### PARTIAL RELEASE

**From:** [redacted]@ov.scot

**Sent:** 17 November 2020 15:51

**To:** Cabinet Secretary for Justice <[CabSecJustice@gov.scot](mailto:CabSecJustice@gov.scot)>

**Cc:** Director of Justice <[DirectorofJustice@gov.scot](mailto:DirectorofJustice@gov.scot)>; Dalrymple C (Catriona) <[Catriona.Dalrymple@gov.scot](mailto:Catriona.Dalrymple@gov.scot)>; [x4]@gov.scot; Head of Justice Analytical Services <[headofjas@gov.scot](mailto:headofjas@gov.scot)>; [x3]@gov.scot McFarlane J (John) <[John.McFarlane@gov.scot](mailto:John.McFarlane@gov.scot)>; [ ]@gov.scot

**Subject:** Briefing - Cabinet Secretary meeting(s) with justice spokespeople - Various dates

[redacted]

Apologies for the delay in coming back in the queries below from the Cabinet Secretary. There is still further work underway on estimates as Justice Social Work are submitting returns based on current levels of UPW remaining.

In addition, JAS have been developing a model to estimate what the impact of regulations would be based on estimated timescales for regulations (which are subject to decision and approval by Parliament). An initial analytical paper from

JAS outlining estimates from this and the rationale for the methodology is attached for reference.

This sets out:

- the latest position on estimates of impact of the policies, if they were implemented on the current outstanding hours
- the forecast of outstanding hours by March 2021 under three different scenarios for court and JSW capacity
- the impact of each of the policies on these forecast hours, if the reduction was implemented at the end of March 2021

Going into the COVID-19 crisis, there were an estimated 690,000 hours of UPW remaining. Over the months to September, the combination of reduced court activity to conclude cases and issue new community orders and reduced JSW capacity to process unpaid work meant that there was only a moderate change in the level of hours outstanding; in September 2020, there were around 720,000 outstanding UPW hours. Local authority returns for a further update to this estimate are in the process of being received by JAS and we will provide a further update on this once a full or close to full set of information is available.

A number of policy options have been proposed to remove outstanding UPW hours. These are:

- Original Policy: A 30% reduction of each individual's imposed hours
- Policy A: A 40% reduction of each individual's imposed hours
- Policy B: A 50% reduction of each individual's imposed hours
- Policy C: A 30% reduction of each individual's imposed hours, but with exclusions of individuals with a domestic abuse aggravator or sexual crimes.
- Policy D: A 35% reduction of each individual's imposed hours, but with exclusions of individuals with a domestic abuse aggravator or sexual crimes.
- Policy E: A 35% reduction of each individual's imposed hours but with the maximum reduction in hours for any individual of 50 hours.

Levels of new community order disposals are now close to normal, owing in large part to summary business levels being close to normal. However, it is understood that JSW capacity remains much more constrained due to requirements for physically distanced delivery. If this is the case, the expected number of outstanding orders would be expected to grow more rapidly in the coming months (further Local Authority data on the recent picture is being gathered and will be needed to properly assess this). If the outstanding hours do continue to increase then dependent on when the one-off reduction in hours is applied, a different number of hours will be removed; the later the reduction is applied, the more hours will be removed.

### **Estimates of the scale of impact of the proposed policies (applied to the most recent estimate of outstanding UPW hours)**

As above, in September 2020, there were around 720,000 outstanding UPW hours. The impact of each policy option on this figure is summarised in the table below. For most of these estimates, only a "point estimate" (single number) is provided, but it should be noted that there is still uncertainty due to data quality; this uncertainty cannot be fully quantified.

	% Reduction	Cap	DA/SC Eligible	UWO Hours Removed	%Difference from Original Policy
Original Policy	30%	×	✓	310,000	-
A	40%	×	✓	400,000	27%
B	50%	×	✓	470,000	50%
C	30%	×	×	250,000	-21%
D	35%	×	×	280,000	-10%
E	35%	50 Hours	✓	300,000 - 310,000	-4%

The attached paper also sets out scenarios of estimated backlog if no action is taken and if the regulations come into force in March. Copied below, is the growth scenario forecast which adds weight to the case for regulations to be brought forward once a decision can be made.

Scenario	0: No growth	1: Lower growth	2: Central Growth	3: Higher growth
Hours Imposed Compared to 19/20 Average (Nov-20 to Mar-21) <sup>1</sup>	JSW capacity to dispose cases keeps pace with courts capacity to issue new orders with unpaid work	86%	100%	145%
Hours Processed Compared to 19/20 Average (Sep-20 to Mar-21) <sup>1</sup>		50%	35%	30%
<b>Estimated Hours Outstanding in March 2021</b>	<b>720,000</b>	<b>990,000</b>	<b>1,190,000</b>	<b>1,520,000</b>

[30(c)]

The Scottish Association of Social Work have written to the Cabinet Secretary to add the voice of their members to the calls from Social Work Scotland and others that action be taking to reduce unpaid work hours to help mitigate the risk of justice social work being completely overwhelmed.

There are growing challenges around relations with local authority justice social work services and there are significant concerns about capacity to ensure effective supervision as well as deliver UPW. [out of scope]

While a decision on the regulations is largely contingent [redacted], we have engaged with Parliamentary Liaison on potential dates if regulations are approved. The provisional bid is timetabled for laying on 25 January which is the earliest date that could now be offered and this would allow scrutiny before the pre-election period with the regulations expected to be in force in March (subject to Parliamentary approval).

Even based on this date, allowing for finalisation of policy and supporting documents, engagement with stakeholders and styling the timing gets challenging if a decision cannot be made in the next week or two. There is also the risk the Coronavirus Act itself and the powers to vary orders may not be available after the election period so to help ensure community justice delivery partners can adapt and prepare for further increases in court business, it remains high priority to look to bring forward regulations to vary unpaid work requirements in January, which would require a decision this month to keep to that timetable.

Officials will update on forecasting and provide further advice [redacted].

I hope this helps to inform the potential call with [redacted].

Thanks

[redacted]

[redacted] | Community Justice Division | Scottish Government | GWR, St Andrew's House, Edinburgh, EH3 1 DG | (Currently WFH) Blackberry: [ ] |

## DOCUMENT 14

### PARTIAL RELEASE

**From:** [ ]@gov.scot

**Sent:** 16 December 2020 16:50

**To:** Cabinet Secretary for Justice <CabSecJustice@gov.scot>

**Cc:** Minister for Community Safety <MinisterCS@gov.scot>; Lord Advocate <LordAdvocate@gov.scot>; Solicitor General <SolicitorGeneral@gov.scot>; DG Education, Communities & Justice <DGECJ@gov.scot>; Director of Justice <DirectorofJustice@gov.scot>; Dalrymple C (Catriona) <Catriona.Dalrymple@gov.scot>; [ ]@gov.scot; Cowan WJ (Willie) <Willie.Cowan@gov.scot>; [x17]@gov.scot; SCJD COVID-19 Coordination Hub <SCJDCOVID19@gov.scot>; Coronavirus Legislation Co-ordination <Covid.Leg@gov.scot>; Communications Justice

<CommunicationsJustice@gov.scot>; McFarlane J (John)  
<John.McFarlane@gov.scot>;

**Subject:** Submission to Cabinet Secretary - Further advice on reduction of unpaid work requirements in CPOs

**Importance:** High

[redacted]

As referred to during our call with the Cabinet Secretary this morning, and further to his recent discussion with [redacted], I've attached a submission providing advice in relation to the proposal to reduce unpaid work and other activity requirements in CPOs. I've also attached (as referred to in the submission) draft regulations, a draft policy note, [redacted].

If you need anything else, or Cab Sec would like to discuss, just let me know.

Kind regards,

[redacted]

[ ]  
Scottish Government | Community Justice Division | [ ]

From: [redacted]  
Community Justice Division  
16 December 2020

Cabinet Secretary for Justice

## **COMMUNITY PAYBACK ORDERS – ADVICE ON REGULATIONS TO REDUCE THE VOLUME OF OUTSTANDING UNPAID WORK HOURS WITH EXCEPTIONS**

### **Purpose**

1. To:
  - provide advice on the reduction of the outstanding volume of unpaid work and other activity (UPW) hours in community payback orders (CPOs), including exceptions informed by [redacted] and rapid engagement with Police Scotland and victim support organisations;
  - seek approval for the recommendation that UPW requirements imposed in existing CPOs should be reduced by 35% with exceptions for domestic abuse, sexual offences, and stalking;
  - invite comments on a draft policy note which sets out the rationale for the policy; and

- seek approval to proceed to finalise draft regulations and plans to lay the regulations on 29 January 2021.

## Priority

2. **Urgent** – a response as soon as possible and by **Monday 21 December** would allow finalisation of the regulations by SGLD in preparation for laying on 29 January. A copy of the draft regulations is attached to the covering email although these are subject to further discussions with stakeholders and SGLD. A final version of the regulations and all accompanying documents will be provided for approval in January but agreement on the overall approach is needed at this time.

## Background

3. Our submissions of 22 June and 24 July set out the issues arising around the delivery of UPW requirements in CPOs as a result of the pandemic, and you agreed on 24 June that we should proceed with the development of draft regulations to reduce the number of outstanding hours, while highlighting the significant handling issues which would need to be considered should regulations be taken forward. You also asked that exceptions be explored, noting that you were sympathetic to excluding domestic abuse and sexual offending from any reduction in UPW hours (following concerns raised in relation to these and some other offences by Scottish Women's Aid).

4. [redacted]

## Assessment of potential impact on reporting of domestic abuse and sexual offending

5. [redacted] we have taken forward rapid engagement with specialist colleagues in Police Scotland and victim support organisations (VSS, SWA, ASSIST, and Rape Crisis Scotland) around the risk of reduced reporting in relation of domestic abuse and sexual offences and whether the same effect would be anticipated or not for other categories of offending. We have also paid particular heed to our obligations under the Istanbul Convention.

6. There is broad agreement amongst those consulted that there are a particular set of issues which impact on the reporting of domestic abuse and sexual offences and that not excluding these offences from the proposed regulations carries a risk of impacting on reporting, especially when aspects of victim trust and confidence in the justice system is fragile. As well as a risk of impacting on reporting of offences, a risk of attrition of victims and witnesses where offences have been reported but not concluded was also noted.

7. [redacted]

8. Supporting this, research shows that there are particular barriers to the reporting of domestic abuse and sexual offences. For example, the Whole Lives Survivor Survey from Safe Lives<sup>1</sup> found that on average, survivors experienced four years of domestic abuse before telling someone. A wide range of action has been taken to help remove those barriers and increase protection from abuse, including the Domestic Abuse (Scotland) Act 2018, investment in training and support, campaigns including 16 Days of Activism against Gender-Based Violence, and other measures such as the Domestic Abuse Protection (Scotland) Bill.

[redacted]

### **Proposed policy**

9. Subject to your views on the above, it is recommended that there should be a 35% reduction on all UPW hours imposed, excluding those CPOs imposed for domestic abuse, sexual offences, and stalking.

10. [redacted]

11. In relation to your request for indicative figures around the likely effect of the regulations, previous modelling by Justice Analytical Services provided a number of different scenarios for how outstanding hours may evolve over the months until the policy is implemented in March. [redacted] If the backlog were not to grow further, the “35% policy” would remove 290,000 hours and the “40% policy” would remove around 320,000 hours as per above, of the 740,000 hours currently in the system at present<sup>2</sup>. However, JSW capacity is not expected to increase in the coming months and any increase in new hours imposed, either through increased court activity levels or changes to sentencing behaviours, could make the number of outstanding hours grow significantly. If the backlog were to grow to 1,070,000 (which is within the range of forecast scenarios previously provided) the “35% policy” would remove an estimated 370,000 hours, reducing the total to around 700,000 hours and the “40% policy” would remove an estimated 420,000 hours, reducing the total to around 650,000 hours. These would both be similar to the level of outstanding hours last April near the start of lockdown.

12. While all of these estimates are lower than the 450,000 hours which Social Work Scotland recommended removing in their position paper in June (of 700,000 hours in the system at that point), a balance clearly has to be struck between easing pressure on the justice systems and preventing putting confidence in the justice system at serious risk.

13. A draft policy note has been provided with the covering email, which sets out the rationale for the approach being taken. This does not need to be finalised until January and we will continue to consider possible improvements, but any comments at this stage on the overall approach being taken would be welcome.

---

<sup>1</sup> <https://safelives.org.uk/policy-evidence/whole-lives-improving-response-domestic-abuse-scotland>

<sup>2</sup> All calculations are based on exclusions for domestic abuse and sexual offences. Stalking is a small proportion of convictions and unlikely to make a large impact on these figures.

## **Communications**

14. [redacted]

## **Conclusion and recommendation**

15. We recommend that you:

i) agree that unpaid work and other activity requirements imposed in existing CPOs should be reduced by 35% with exclusions for domestic abuse, sexual offences, and the offence of stalking;

ii) provide any views on the draft policy note, particularly in relation to the overall justification for the approach proposed; and

iii) confirm that you are content for officials to proceed to finalise draft regulations and plans to lay the regulations on 29 January 2021.

[redacted]

Justice: Community Justice Division

[ ]

16 December 2020

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
Minister for Community Safety			X		
Lord Advocate			X		
Solicitor General			X		
DG Education, Communities and Justice Katherine Peskett Stephen Pathirana Cat Dalrymple [ ] Willie Cowan [x8] X4(SGLD) [x5] Justice & Safer Communities Covid Hub Coronavirus Act coordination team Communications Justice John McFarlane					

Attachments not released as now published: Policy note, regulations. Other material withheld

**DOCUMENT 15    Reply to Submission to Cabinet Secretary - Further advice on reduction of unpaid work requirements in CPOs - 22 Dec**

**PARTIAL RELEASE**

**From:** [ ]@gov.scot> **On Behalf Of** Cabinet Secretary for Justice

**Sent:** 22 December 2020 19:42

**To:** [ ]@gov.scot>; Cabinet Secretary for Justice <CabSecJustice@gov.scot>

**Cc:** Minister for Community Safety <MinisterCS@gov.scot>; Lord Advocate <LordAdvocate@gov.scot>; Solicitor General <SolicitorGeneral@gov.scot>; DG Education, Communities & Justice <DGECJ@gov.scot>; Director of Justice <DirectorofJustice@gov.scot>; Dalrymple C (Catriona) <Catriona.Dalrymple@gov.scot>; [ ]@gov.scot>; Cowan WJ (Willie) <Willie.Cowan@gov.scot>; [x17] @gov.scot>; SCJD COVID-19 Coordination Hub <SCJDCOVID19@gov.scot>; Coronavirus Legislation Co-ordination <Covid.Leg@gov.scot>; Communications Justice <CommunicationsJustice@gov.scot>; McFarlane J (John) <John.McFarlane@gov.scot>;

**Subject:** RE: Submission to Cabinet Secretary - Further advice on reduction of unpaid work requirements in CPOs

[redacted]

The Cabinet Secretary is content to agree a 35% reduction with exclusions in place for domestic abuse, sexual offences and stalking. [redacted]

[redacted]

Regards

[redacted]

[redacted]

Private Secretary to Cabinet Secretary for Justice, Humza Yousaf

[CabSecJustice@gov.scot](mailto:CabSecJustice@gov.scot)

0131 244 4091

[ ]

All emails and attachments sent by a Ministerial Private Office to any other official on behalf of a Minister relating to a decision, request or comment made by a Minister, or a note of a Ministerial meeting, must be filed appropriately by the recipient. Private offices do not keep official records of such e-mails or attachments.

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**DOCUMENT 16**

**PARTIAL RELEASE**

**13 January 2021 17:26 – reply from Cabinet Secretary's office**

**RE: CPO Regulations - update on handling advice and communications plan**

[redacted]

The Cabinet Secretary has noted.

Mr Yousaf is broadly content with the approach, [redacted]

Regards

[redacted]

[redacted]

Private Secretary to Cabinet Secretary for Justice, Humza Yousaf

[CabSecJustice@gov.scot](mailto:CabSecJustice@gov.scot)

0131 244 4091

[ ]

All emails and attachments sent by a Ministerial Private Office to any other official on behalf of a Minister relating to a decision, request or comment made by a Minister, or a note of a Ministerial meeting, must be filed appropriately by the recipient. Private offices do not keep official records of such e-mails or attachments.

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**From:** [redacted]@gov.scot

**Sent:** 12 January 2021 14:06

**To:** Cabinet Secretary for Justice <[CabSecJustice@gov.scot](mailto:CabSecJustice@gov.scot)>

**Cc:** Director of Justice <[DirectorofJustice@gov.scot](mailto:DirectorofJustice@gov.scot)>; Dalrymple C (Catriona)

<[Catriona.Dalrymple@gov.scot](mailto:Catriona.Dalrymple@gov.scot)>; [x6]@gov.scot; Communications Justice

<[CommunicationsJustice@gov.scot](mailto:CommunicationsJustice@gov.scot)>; McFarlane J (John)

<[John.McFarlane@gov.scot](mailto:John.McFarlane@gov.scot)>

**Subject:** CPO Regulations - update on handling advice and communications plan

[redacted]

Further to handling advice on the planned regulations to vary UPW requirements in existing CPOs from [redacted] (Comms Justice) on 24 December, which Mr Yousaf confirmed he was content with on 30 December, and feedback from senior staff call on Monday, we have commenced engagement with Social Work Scotland, COSLA and Community Justice Scotland [redacted].

## **Approach to announcement**

Comms advice from 24 December is copied below for ease of reference.

[redacted]

In support of this the following points are noted:

[redacted]

## **Stakeholder handling issues**

A particular handling issue which Mr Yousaf may wish to comment on is around timing of engagement with victims organisations. In December, helpful engagement took place with a number of VCOs on the risk that victims would not report offences, which informed consideration of exceptions.

The Cabinet Secretary has meetings with VSS on 18 January, RCS & SWA on 25 January (separate meetings) and ASSIST on 28 January. There is also a meeting of the VOCFS on 25 January.

During VSS and SWA meetings with officials, they did note that they were keen to discuss how any regulations would be communicated to victims / the wider public. We would therefore suggest we speak with them (and possibly the other VCOs) in confidence before Mr Yousaf's calls to take on board any views they have in further communication planning.

Following this, we would recommend that the Cabinet Secretary indicates during his planned calls that regulations will be laid on 29 January with exclusions. It will be helpful to note that this has been informed by the helpful engagement of VCOs with officials around risks of impact on reporting of crime. Suggested briefing will be provided if Mr Yousaf is content.

We are also updating other key stakeholders such as the Judicial Institute, COPFS, SCTS, the Scottish Sentencing Council and Police Scotland in advance of the regulations being laid as they have engaged informally to date.

## **Conclusion and recommendation**

We would recommend that a letter to the Justice Committee copied to the Covid Committee is planned for 28 January with news release on either 28 Jan pm or 29 Jan am. [redacted]

[redacted]

## **Background**

Comms advice from 24 December:

[redacted], Cabinet Secretary,

**Initial handling advice & Clearance of 'if asked' press line to Tory release**

1. Please find initial handling advice, principally on timing of the SG announcement, for the Cabinet Secretary's consideration around the reduction of Unpaid Work Orders.
2. With thanks, I am also seeking the Cabinet Secretary's clearance/feedback on our proposed SG response to the Jan 2<sup>nd</sup> Tory release on the same issue.

An early decision on the 1<sup>st</sup> item if possible would be appreciated, given current leave arrangements and staffing.

Thanks,

[redacted]

**:: Timing of Announcement**

**I have discussed with Cat and John and this reflects policy and political, as well as media handling considerations; [redacted]**

[redacted]

**In conclusion therefore, it is considered that more detailed handling based on the above advice is prepared in the week of the 4th January 2021, with contact starting around the key individuals to ensure they are sighted and supportive and positive support is choreographed for a proactive announcement at a date prior to the regulations being laid.**

**DOCUMENT 17 - Briefing for meetings with VSS etc. Same material used for VSS, SWA, RCS and ASSIST**

**PARTIAL RELEASE**

	<b>Unpaid work</b>
<b>Discussion</b>	<ul style="list-style-type: none"><li>• In relation to Community Payback Orders, thank you for your engagement with officials around the potential risk of reduced reporting of offences involving domestic abuse and sexual offending. This was extremely valuable to my consideration of the potential use of powers under the Coronavirus Act to vary unpaid work requirements.</li><li>• Significant work has taken place, by VSOs, Government and justice partners, to remove barriers to reporting of such offences and we do not want to set this back.</li><li>• I wanted to advise you, in confidence, that we will be bringing forward regulations to vary unpaid work requirements towards the end of January which will exclude CPOs imposed for offences involving domestic abuse, sexual offending or stalking.</li><li>• In normal circumstances, we would never change court orders but these are exceptional circumstances and it is clear from evidence from local authorities and Social Work Scotland that action is needed to prevent justice social work being overwhelmed. This is also to help ensure the justice system as whole can operate effectively which is in the interests of all, including victims.</li><li>• Thank you for your advice and engagement on issues relating to this. If you would be content to discuss this further, I have asked my officials to speak to you again about how this decision can best be communicated in a way which is clear to both victims and the wider public, and avoids causing any undue concern.</li></ul>
<b>Background</b>	<ul style="list-style-type: none"><li>• [30(c)] potential exclusions to any variation of UPW requirements in CPOs using powers in the Coronavirus Act, officials engaged with VSS, SWA, Assist, Rape Crisis Scotland and Police Scotland to inform consideration of the potential impact on reporting of offences and who this differed from other offences.</li><li>• There was acknowledgement that issues are particular to domestic abuse and sexual offending, with points being raised about stalking too.</li><li>• While some other offences were mentioned there was broad agreement that the exclusions had to be kept relatively narrow and there was a clear rationale around the categories identified.</li><li>• This informed advice provided by [redacted]16 December which the Cabinet Secretary for Justice approved.</li><li>• The regulations are being finalised based on policy of varying existing CPOs by 35%, excluding orders involving domestic abuse, sexual offending and stalking.</li><li>• Regulations are planned to be laid on 29 January and will be subject to Parliamentary scrutiny and approval.</li></ul>

**DOCUMENT 18 COMMUNITY ORDERS (CORONAVIRUS) (SCOTLAND)  
REGULATIONS 2021 - submission seeking approval to lay regulations**

**From:** [redacted]@gov.scot> **On Behalf Of** Cabinet Secretary for Justice

**Sent:** 26 January 2021 13:37

**To:** [redacted]@gov.scot>; Cabinet Secretary for Justice

<CabSecJustice@gov.scot>

**Cc:** First Minister <firstminister@gov.scot>; Lord Advocate Full release

<LordAdvocate@gov.scot>; Solicitor General <SolicitorGeneral@gov.scot>; Minister

for Community Safety <MinisterCS@gov.scot>; Minister for Parliamentary Business

and Veterans <MinisterPBV@gov.scot>; DG Education, Communities & Justice

<DGECJ@gov.scot>; Director of Justice <DirectorofJustice@gov.scot>; Dalrymple C

(Catriona) <Catriona.Dalrymple@gov.scot>; Cowan WJ (Willie)

<Willie.Cowan@gov.scot>; Colvin I (Iona) <Iona.Colvin@gov.scot>; [x8]@gov.scot>;

SCJD COVID-19 Coordination Hub <SCJDCOVID19@gov.scot>; SSI Unit

<SSI\_Unit@gov.scot>; PLU SSI Programme Mailbox

<PLUSSIProgrammeMailbox@gov.scot>; [x3]@gov.scot>; McFarlane J (John)

<John.McFarlane@gov.scot>; Communications Justice

<CommunicationsJustice@gov.scot>; [x4]@gov.scot>; Coronavirus Legislation Co-

ordination [Covid.Leg@gov.scot](mailto:Covid.Leg@gov.scot)

**Subject:** RE: COMMUNITY ORDERS (CORONAVIRUS) (SCOTLAND)

REGULATIONS 2021 - submission seeking approval to lay regulations

As discussed on the pre cabinet call earlier today the Cabinet Secretary is content with the recommendations. He has made one amendment to the JC letter, please see attached. I note that the preference is for the letter to issue on Thursday afternoon.

[redacted] Private Secretary to Cabinet Secretary for Justice, Humza Yousaf

[CabSecJustice@gov.scot](mailto:CabSecJustice@gov.scot) 0131 244 4091 [ ] All emails and attachments sent by a Ministerial Private Office to any other official on behalf of a Minister relating to a decision, request or comment made by a Minister, or a note of a Ministerial meeting, must be filed appropriately by the recipient. Private offices do not keep official records of such e-mails or attachments. Scottish Ministers, Special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See [www.lobbying.scot](http://www.lobbying.scot)

**From:** [redacted]@gov.scot

**Sent:** 25 January 2021 12:22

**To:** Cabinet Secretary for Justice <[CabSecJustice@gov.scot](mailto:CabSecJustice@gov.scot)>

**Cc:** First Minister <[firstminister@gov.scot](mailto:firstminister@gov.scot)>; Lord Advocate <[LordAdvocate@gov.scot](mailto:LordAdvocate@gov.scot)>; Solicitor General <[SolicitorGeneral@gov.scot](mailto:SolicitorGeneral@gov.scot)>; Minister for Community Safety <[MinisterCS@gov.scot](mailto:MinisterCS@gov.scot)>; Minister for Parliamentary Business and Veterans <[MinisterPBV@gov.scot](mailto:MinisterPBV@gov.scot)>; DG Education, Communities & Justice <[DGECJ@gov.scot](mailto:DGECJ@gov.scot)>; Director of Justice <[DirectorofJustice@gov.scot](mailto:DirectorofJustice@gov.scot)>; Dalrymple C (Catriona) <[Catriona.Dalrymple@gov.scot](mailto:Catriona.Dalrymple@gov.scot)>; Cowan WJ (Willie) <[Willie.Cowan@gov.scot](mailto:Willie.Cowan@gov.scot)>; Colvin I (Iona) <[Iona.Colvin@gov.scot](mailto:Iona.Colvin@gov.scot)>; [redacted]@gov.scot] SCJD COVID-19 Coordination Hub <[SCJDCOVID19@gov.scot](mailto:SCJDCOVID19@gov.scot)>; SSI Unit <[SSI\\_Unit@gov.scot](mailto:SSI_Unit@gov.scot)>; PLU SSI Programme Mailbox <[PLUSSIProgrammeMailbox@gov.scot](mailto:PLUSSIProgrammeMailbox@gov.scot)>; [redacted]@gov.scot] McFarlane J (John) <[John.McFarlane@gov.scot](mailto:John.McFarlane@gov.scot)>; Communications Justice <[CommunicationsJustice@gov.scot](mailto:CommunicationsJustice@gov.scot)>; [redacted]@gov.scot Coronavirus Legislation

Co-ordination <Covid.Leg@gov.scot>

**Subject:** COMMUNITY ORDERS (CORONAVIRUS) (SCOTLAND) REGULATIONS 2021 - submission seeking approval to lay regulations

[redacted]

Please find attached submission seeking the Cabinet Secretary for Justice's approval to lay the Community Orders (Coronavirus) (Scotland) Regulations 2021. The regulations are referred to in the sub as Annex A and are attached for clearance. These will be planned to be laid on Friday (29 January).

**Timing – Immediate:** Clearance is requested as soon as possible or by close on Wednesday to allow final preparations for publication and laying on 29 January.

The submission also seeks clearance of the Policy Note and other supporting documents. A draft letter to Convener of the Justice Committee, copied to the Convener of the Covid Committee is provided for clearance and issue on Thursday at 2pm.

**Annexes referred to in the submission are provided in this cover email:**

Regulations for approval to lay:

**Annex A**

Supporting Documents: Policy Note, BRIA, EQIA, CRWIA, Islands Impact: **Annex B**

Please note the BRIA is to be physically signed by the Cabinet Secretary once cleared.

Letter to Justice Committee:

**Annex C**

A draft news release will be provided by Comms Justice and a suggested narrative is also being prepared.

Thanks

[redacted]

[redacted] | Community Justice Division | Scottish Government | GWR, St Andrew's House, Edinburgh, EH3  
1 DG | (Currently WFH) Blackberry: [redacted]  
|

**DOCUMENT 19 - WITHHELD**