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Chief Social Work Officers – by email

CC:

CJP co-ordinators	CJP chairs
Justice social work managers	COSLA
Community Justice Scotland	SCTS
Criminal Justice Voluntary Sector Forum	Care Inspectorate
Judicial Institute	Social Work Scotland

03 April 2020

Dear colleague,

CORONAVIRUS (SCOTLAND) BILL - UPDATE FOR JUSTICE SOCIAL WORK SERVICES ON THE PROVISIONS RELATING TO COMMUNITY ORDERS, PAROLE BOARD, AND RELEASE OF PRISONERS

The COVID-19 pandemic is continuing to have a substantial impact and we appreciate the challenges that you, your colleagues, and the people you support are facing. We again want to express our thanks for the dedication and professionalism you and your colleagues continue to demonstrate, and the actions you have taken to prioritise the safety and wellbeing of some of the most vulnerable people in our communities, and to prioritise the management of those individuals who present the greatest risk of harm.

As you may be aware, the Scottish Government introduced the Coronavirus (Scotland) Bill (“the Bill”) to the Scottish Parliament on 31 March in order to put in place a variety of measures – including in relation to the justice system - to respond to the emergency situation caused by this pandemic. The Bill complements and supplements the UK-wide Coronavirus Act 2020 which, after receiving consent from the Scottish Parliament, was passed by the UK Parliament on 25 March 2020.

The Bill is expected to receive Royal Assent within the next few days, becoming the Coronavirus (Scotland) Act 2020 (“the 2020 Act”). Its various provisions will come into force the day after Royal Assent, and we will notify you as soon as this date has been confirmed. Ahead of this, and further to our letter of 20 March on business continuity and reprioritisation for justice social work services, we are writing now to update you on those measures which will or may affect justice social work services, in particular with regard to community orders, the operation of Parole Board Scotland, and the potential emergency release of prisoners.

A full explanation of the measures – all of which are set out in schedule 4 of the legislation - can be found in the Policy Memorandum accompanying the Bill which is available here

(along with the Explanatory Notes and Financial Memorandum):

<https://www.parliament.scot/parliamentarybusiness/Bills/114929.aspx>. However, we have set out again below a brief overview of the rationale for the measures, and an explanation of what these do. We have also included some brief information about electronic monitoring and the third sector, which are not related to the legislation.

Finally, we have included at the end of this letter a short summary of immediate actions which local areas will need to take to ensure compliance with this new legislation.

COMMUNITY ORDERS

We are aware that justice social work services are experiencing significant difficulties in continuing to implement community orders due to a combination of sickness, self-isolation, and compliance with guidance on social distancing, all of which are affecting both staff and individuals on orders.

We understand that local areas are currently having to severely restrict the provision of unpaid work in particular, and to scale back the delivery of other aspects of community sentences. As a result, a significant number of individuals will not be able to comply with the requirements of their orders (through no fault of their own), and local authorities are at risk of not complying with their own statutory obligations with regard to the delivery and oversight of such orders.

Whether or not non-compliance is considered a breach is a matter for the courts; but in order to address this, each case would need to be referred back to the court to be dealt with individually, which has significant capacity implications. Without some action being taken, there is a high risk that many of these court orders would be effectively abandoned, which would have serious implications for the administration of justice, the delivery of appropriate interventions, and confidence in the justice system.

With the outbreak, and the measures required to control it, expected to last for some time, there will be a significant accumulation of unpaid work hours (and possibly other requirements) which will need to be completed in due course. In the event that this volume of requirements becomes unmanageable in terms of justice social work or court resources, mitigating action on a system-wide basis may be required.

In order to address these issues, the legislation introduces three measures in relation to community orders. It should be noted that the Scottish Government consulted informally with a number of stakeholders (including Social Work Scotland, the Scottish Courts and Tribunals Service, COSLA, and Community Justice Scotland) to inform the development of these, and will continue to liaise with those bodies as the situation evolves.

(i) Extension of the specified period for unpaid work or other activity requirements in Community Payback Orders

As soon as the 2020 Act comes into force, the time limit for the completion of all existing unpaid work or other activity requirements in CPOs will be extended by 12 months (i.e. whatever specified period has been imposed by the court for completion of an unpaid work or other activity requirement in an individual order, the new end date will be 12 months later).

This will be alterable by a Scottish statutory instrument, in order to allow it to be extended further should that be necessary.

A restriction will also be placed on courts for the period during which the legislation is in force, to ensure that any new unpaid work or other activity requirements have a time limit of at least 12 months from the point of imposition.

These measures will allow justice social work to suspend all programmes relating to unpaid work or other activity requirements for the duration of the pandemic without affecting the ability of individuals to complete their hours within court-directed timescales – and we would encourage all local authorities to now do so, if this decision has not already been taken.

It should be noted that, under this measure, a duty has been placed on local authorities to inform those subject to the relevant CPOs of the changes made by this provision (i.e. that the period within which the unpaid work or other activity requirement has been extended, and by how much). A letter template has been attached as an Annex to this letter, which can be adapted to your local arrangements.

Please ensure that all local areas issue this – or a similar notification - to all relevant individuals as soon as the 2020 Act comes into force.

(ii) Ability to postpone CPOs or DTTOs, or requirements contained in those orders, for a specified period

It is hoped that the above measures at (i) will be sufficient in allowing justice social work to continue to facilitate all remaining orders. Nonetheless, should the situation with COVID-19 significantly deteriorate, it may become necessary to take further action in order to allow justice social work to focus on cases presenting the highest risk. The legislation therefore gives the Scottish Ministers the power to postpone certain orders (CPOs and DTTOs), or requirements contained in those orders (including by reference to type of offence or individual), for a specified period – essentially pressing pause on these until such time as the situation improves. On the expiry of the specified period, the orders or requirements would progress as if no time had elapsed since the postponement was put in place (but obviously moving forward relevant timescales/deadlines to account for this), allowing the requirements to be carried out once restrictions related to the pandemic are lifted. Should this power be used, the Act places a duty on local authorities to inform those subject to the relevant orders of any changes made by this provision.

Please note that no orders are being postponed at this time; we will contact you again with further information and guidance if plans are underway to use this power.

(iii) Ability to vary the requirements of community orders which have been imposed by the courts

The legislation also gives the Scottish Ministers the power to vary, in bulk, the requirements of community orders which have been imposed by the courts. The issue this seeks to resolve is slightly longer term; given the need to delay the carrying out of unpaid work and other activity requirements (and possibly other aspects of orders) there is likely to be an

unmanageably large number of hours of unpaid work due to be carried out post-crisis. This aspect of the legislation will enable the Scottish Ministers, by a Scottish statutory instrument, to reduce or vary the requirements of orders, or to revoke certain orders entirely, in order to prevent the system being unable to deliver the outstanding orders in due course. As with the above, there would be a duty on local authorities to inform those subject to the relevant orders of any changes made by this provision.

Please note, however, that no decision has yet been taken as to whether or not this power will be used, and at present all requirements of community orders remain in place.

The Scottish Government will work closely with Social Work Scotland and others to identify exactly if, when, and how these measures should be used.

PAROLE BOARD

The legislation also has some provisions relating to Parole, which again can be found in schedule 4. These provide for delegation powers so the Chair of the Parole Board can delegate to other members in order to allow a wider spread of responsibility among Board members; all to increase resilience and also to plan for an event where they are unable to carry out their statutory functions. The provisions also allow for all the Chair's functions to be automatically exercised by the next most senior Board member where the Chair is unable to carry out their statutory functions.

There is also a change to the Parole Board Rules at Rule 20 so the Parole Board when determining a Part IV (tribunals) case can decide not to hold an oral hearing unless it is in the interests of justice to do so. The provisions also allow that where an oral hearing is to take place that it can all be by video or teleconference. This will cut down the number of in-person oral hearings being held and keep members and others safe by avoiding face-to-face contact.

The provisions also have the effect that extended sentence prisoners recalled under section 17(3) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 and serving the extension part of their sentence, can be considered under Part III of the Rules instead. This has the effect of reducing the number of hearings considered under Part IV and allow these cases where appropriate to be heard at casework meetings by two rather than three members. This is designed to increase resilience.

RELEASE OF PRISONERS

We have identified that, in some circumstances related to the impact of COVID-19 in custodial establishments, such as where a relatively high proportion of prison officers and other staff are unable to attend work due to illness, self-isolation, or other related issues, we may have to consider the emergency release of prisoners. This would be done for the purpose of protecting the security and good order of the relevant prison or the health, safety and welfare of prisoners and staff. Emergency release would be formally authorised under regulations made under this legislation – it is not authorised by the legislation itself.

Scottish Ministers will thus have powers under this legislation to consider early release of prisoners to help limit the spread of COVID-19 and to ensure our prisons can operate safely.

However, it should be noted that steps already taken, such as limiting court business, are already having an impact on reducing the prison population, and we will consider whether appropriate steps can be taken via Home Detention Curfews.

The Scottish Ministers can make provisions in the regulations for different classes of person, prisons or classes of prison or other different purposes. Prison Governors retain the ability to veto release where they think this would involve an immediate risk of harm to an identified person. There are also a number of categories of prisoners who are excluded from being released under the regulations. We would encourage you to look at the detail of the legislation (see link provided above) to see the list of those excluded for consideration under these arrangements, and also how the different arrangements might apply for long-term and short-term prisoners.

We understand that there is a need to work with stakeholders as early as possible in relation to these matters. Prison release can be challenging to plan for and arrange even in the course of normal business, and we do not underestimate the challenges of these measures during this time. Given the nature of emergency legislation, consultation on these measures has had to be constrained compared to what is usually in place for a legislative process. We have been in contact with Social Work Scotland about these measures and will continue these discussions, as well as with other partners involved in prison release, in order to plan for any further practical arrangements that would be required to put these measures into effect.

Please note that no prisoners are currently being released in this way; we will contact you again with further information and guidance as appropriate.

NON-LEGISLATIVE OPERATIONAL CHANGES TO ELECTRONIC MONITORING

In addition to the legislative changes noted above, we wanted to make you aware of some operational changes that have been made to the electronic monitoring service. These are to reflect the impact of COVID-19 and also the move to a new contractual period for the electronic monitoring service from 01 April 2020. We have attached a recent letter to the Judicial Institute for Scotland that sets out the details. The impact of these changes will be on court orders and principally on Restriction of Liberty Orders, but we also wanted to make you aware of the broader changes to electronic monitoring given your interests.

THIRD SECTOR

We are aware that third sector partners also support the delivery of community orders and throughcare, and we will communicate with them on what the legislative provisions will mean. We would also encourage you to continue to engage with them at local levels, including through Community Justice Partnerships.

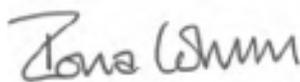
SUMMARY OF IMMEDIATE ACTIONS REQUIRED AS A RESULT OF CORONAVIRUS (SCOTLAND) ACT 2020

At present, the **only** measure in the 2020 Act which requires immediate action is the duty on local authorities to inform individuals subject to CPOs with unpaid work or other activity requirements of the effect of the 12 month extension to the specified period (potentially using the letter template attached).

However, consultation with Social Work Scotland and others on the new legislative measures, and how they will impact justice social work and key partners, will be ongoing. In relation to the powers the Scottish Ministers have to postpone or vary community orders, it is vital that we are able to accurately assess any capacity issues across justice social work services in the coming weeks and months to inform a decision on whether or not these need to be used. We therefore ask that justice social work services provide regular feedback on capacity to Social Work Scotland's Justice Standing Committee, who will contact local areas separately about this.

In the meantime, if you have any queries, these can be directed to cpo@gov.scot, though please note that we are not able to provide advice on individual cases and may not be able to respond immediately to all correspondence.

With thanks and best wishes to you and your colleagues.



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