POLICY NOTE

THE HOME DETENTION CURFEW (AMENDMENT OF SPECIFIED TIME PERIODS) (SCOTLAND) ORDER 2025

SSI 2025/XXX

The above instrument was made in exercise of the powers conferred by section 3AA(6)(b) and (c) of the Prisoners and Criminal Proceedings (Scotland) Act 1993. The instrument is subject to affirmative procedure.

Purpose of the instrument

The purpose of this instrument is to change specific aspects of the eligibility criteria used within the Home Detention Curfew (HDC) process. HDC is a mechanism which supports reintegration by allowing eligible individuals to released subject to licence conditions into the community prior to their liberation date, where assessed as suitable via a risk assessment. Individuals released on HDC will always be subject to a curfew condition which is electronically monitored.

The changes will further support preparation for release and managed re-integration following a custodial sentence, whilst also assisting with the longer-term management of the prison population. The changes within this instrument will also take account of the changes to automatic release points brought into force for certain short-term sentenced individuals, as a result of the Prisoner (Early Release) (Scotland) Act 2025 ('the 2025 Act').

The proposed changes to the HDC eligibility criteria are timescale specific. This is in terms of the minimum time spent in custody before being eligible for HDC release, and the maximum time period an eligible individual can spend released on HDC, when deemed suitable for release following risk assessment.

Therefore, the changes will not fundamentally change the way HDC is operated by the Scottish Prison Service (SPS), but will seek to ensure that HDC can continue to be an important tool to support a managed reintegration following a short-term prison sentence, and increase the potential time individuals assessed as suitable for release can spend on HDC.

The instrument fulfils a Programme for Government (PfG) commitment which aims to support shifting the balance between custody and the community, whilst also delivering actions which will support a sustainable reduction in the prison population.

Policy Objectives

Overview

HDC is a mechanism used by the SPS to allow certain eligible prisoners to be released from custody to spend a part of their sentence in the community subject to licence conditions including a curfew which may be electronically monitored. The policy aim is to help individuals reintegrate into the community following their prison sentence.

Individuals who are serving a short-term custodial sentence (less than 4 years) are eligible to be considered for HDC release from prison, if they meet certain eligibility criteria, are not statutorily excluded, and they are deemed suitable for release following risk assessment.

Individuals serving long-term sentences (4 years and over) can also be considered for release on HDC, but only where they have been approved for release by the Parole Board. In practice, there are few cases of this type, and individuals will typically only have a limited period on HDC before they reach the date that they are released on parole.

The risk assessment process includes the consideration of information held by SPS and also information provided by Social Work and Police Scotland. This information includes an assessment by community based social workers of the suitability of the proposed address where the individual will reside following release (and where the home monitoring unit used for electronic monitoring of their curfew will be installed).

Any breaches of licence conditions or curfew will be considered by the SPS, with an option to recall the individual to custody to serve the remainder of the custodial part of their sentence if it is deemed necessary and proportionate to do so.

Proposed HDC criteria change

Under existing HDC eligibility criteria, HDC release cannot be granted until an eligible individual has served at least 25% of their sentence. This instrument will amend the eligibility for HDC to the point at which an individual will have served at least 15% of their original sentence.

In addition, the instrument will increase the maximum period that eligible individuals can spend released on HDC, from the current maximum of 180 days to a new maximum of 210 days.

These changes will enable eligible individuals to spend longer released on HDC, and also takes account of recent changes to release arrangements for short-term prisoners following implementation of the 2025 Act. The 2025 Act was brought into force to support a sustainable reduction in the prison population in Scotland. The 2025 Act changed the automatic release point for certain individuals who are serving sentences of less than four years, from the current 50% point of their original sentence to the 40% point of their original sentence (except those groups who are excluded and for whom the automatic release point will remain at 50%).

In light of these changes, if the proposed timescale related changes to HDC criteria are not made, the amount of time available for eligible individuals to spend released on HDC is reduced and therefore they would remain in prison rather than on HDC in the community.

Eligibility for HDC & statutory exclusions

HDC release is underpinned by an evidence-based, individualised risk assessment process, and is subject to statutory exclusions. Protecting the public at large and preventing reoffending by the individual, as well as securing the successful reintegration of the individual into the community are key considerations in how HDC is used and operated. The HDC assessment and decision-making processes relating to suitability for release on HDC will not change as a result of these proposed time criteria changes.

There are a number of statutory eligibility criteria for Home Detention Curfew, set out under section 3AA of the Prisoners and Criminal Proceedings (Scotland) Act 1993.

Currently the following statutory exclusions apply to release on HDC (and are not changed by this instrument):

- Where the individual is serving an extended sentence;
- Where the individual is subject to a supervised release order;
- Where the individual is subject to Sex Offender Notification requirements;
- Where the individual is subject to Hospital Direction or a Transfer for Treatment Direction;
- Where the individual is liable to removal from the United Kingdom;
- Where the individual is serving a sentence for a terrorism offence.

There are also other statutory criteria for HDC as follows:

- Individuals must have a sentence of three months or more to be eligible;
- HDC release is not available before the individual has served at least 25% of their sentence;
- The minimum period for which an individual can be released on HDC is 14 days, and the maximum period is 180 days.

These criteria (including the statutory exclusions) can be amended via SSI subject to the affirmative procedure. The instrument makes changes to the eligibility criteria relating to the time period for the minimum sentence served and period of time an individual can be released on HDC, as outlined above.

Impact of Prisoner (Early Release) (Scotland) Act 2025

Following the commencement of the 2025 Act, all eligible short-term prisoners must be automatically released at 40% of their sentence. For example, an individual serving a 12-month sentence (using 360 day approximation) will now be automatically released after 144 days rather than at 180 days. Without any changes to HDC eligibility, the potential time such an individual could spend on HDC would reduce from 90 days (25% minimum to be served before being eligible) to 54 days.

Changing the eligibility criteria to reduce the requirement to serve at least 25% of their original sentence to 15% of their original sentence before being eligible for HDC release,

would primarily adjust HDC operations to account for the changes made to the automatic release point for short-term prisoners under the 2025 Act.

It is therefore considered appropriate and necessary to amend the criteria to maximise the use of HDC following the changes made by the 2025 Act.

Other options have been considered, for example reducing the proportion of a sentence required to be served to 20% point of an original sentence. However, the impacts on possible time for an eligible individual to be released on HDC would not be as significant when considering policy aims set out above, in relation to supporting prison population challenges, and changing the balance of time spent in custody and the community for those who have been risk assessed.

Potential impact of criteria changes

The SPS have confirmed that the proposed criteria changes can be implemented in line with the proposed coming into force date.

It is difficult to estimate the impacts of the criteria change on the number of prisoners being granted HDC in the future, as the outcomes vary depending on the number of eligible individuals at a particular point in time, and also access to HDC depends upon the individual circumstances including their sentence length and time spent on remand before sentencing; whether they pass the individualised risk assessment; whether they have access to suitable accommodation to be released to; and whether they pass the community assessment.

However, we expect that the changes will contribute to an increase in the numbers of individuals who are on HDC at any one time, back to the pre 2025 Act number of around 150, with potential for this to increase. These impacts will be expected over a period of time.

The number of days that an eligible and assessed suitable individual can be granted HDC will depend on their particular circumstances – particularly on their sentence length, how long they may have spent on remand, and the time required to complete the HDC assessment application and assessment processes. As a result, individuals do not all receive the maximum HDC period.

For example, with the release point for short sentence prisoners at 40%, if the minimum portion of a sentence to be served to be eligible for HDC is 15%, an eligible and appropriate individual would require to be subject to at least a 24 month sentence to reach the maximum of 180 days on HDC, or 28 months to reach the maximum of 210 days on HDC.

It is however considered appropriate to adjust these arrangements, in a proportionate manner, by increasing the maximum number of days available to 210 days. Doing so provides scope for HDC operations to be applied for longer periods where conditions permit, and to support appropriate individuals to successfully re-integrate over a longer period of time than is currently available.

For comparison, the UK Government have also recently changed the maximum number of days that can be spent released on HDC in England and Wales from 180 days to 12 months, through the Home Detention Curfew and Requisite and Minimum Custodial Periods (Amendment) Order 2024. (This reflects the situation that there are certain determinate

sentences in England and Wales of longer than four years, which still have automatic release at 50% sentence – and so can potentially permit prisoners to be granted longer periods of HDC.)

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

The Scottish Ministers have made the following statement regarding children's rights:
In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 (the Act), the Scottish Ministers certify that, in their view, *The Home Detention Curfew (Amendment of Specified Time Periods) (Scotland) Order 2025* is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

We have worked closely with SPS on the development of the options under consideration as part of the optimisation work on HDC which has been ongoing since 2023. SPS have provided operational data and information to support the consideration of the options relating to the number of days released on HDC. They are an integral part of the delivery of these proposed changes.

We have also engaged with Social Work Scotland and the Risk Management Authority regarding the nature of the proposed changes, again as part of ongoing partnership working to optimise the management of HDC.

We have also engaged with Victim Support Organisations to provide information and assurance on how the changes may impact on victims, including particular reference to the interaction with the victim notification and the planned reform, whilst confirming that these changes will not alter the robust risk assessment process which already exists for HDC, on the basis of the facts and circumstances of each case.

Impact Assessments

The following impact assessments have been completed for The Home Detention Curfew (Amendment of Specified Time Periods) (Scotland) Order 2025:

- Equality Impact Assessment;
- Child Rights Welfare Impact Assessment;
- Islands Community Impact Assessment.

The Cabinet Secretary for Justice and Home Affairs confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on businesses.

Scottish Government
Justice Directorate
15 May 2025