EXECUTIVE NOTE TO

THE HOME DETENTION CURFEW LICENCE (PRESCRIBED STANDARD CONDITIONS) (SCOTLAND) (No. 2) ORDER 2008 S.S.I. 2008/125

1. The above order was made in exercise of the powers conferred by section 12AA(3) and (4) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 ("the 1993 Act"). The instrument is subject to negative resolution procedure.

2. This Order supersedes the Home Detention Curfew Licence (Prescribed Standard Conditions) (Scotland) Order 2008 (SSI 2008/36) which was annulled by the Scottish Parliament on 12th March 2008.

Policy Objectives

3. Section 15 of the Management of Offenders etc. (Scotland) Act 2005 amended the Prisoners and Criminal Proceedings (Scotland) Act 1993 to introduce a new release scheme commonly known as home detention curfew (HDC). This enables the Scottish Ministers to consider releasing prisoners on licence, under the new section 3AA(1) of the 1993 Act before the date on which they would otherwise be eligible for release under that Act. The primary aim of HDC is to ease reintegration of prisoners back into the community whilst restricting their movements, in particular by virtue of a curfew condition which is monitored electronically by means of a tag.

4. At present, section 3AA(3) of the 1993 Act provides that such a release may only be exercised during the period of 121 days which ends on the day 14 days before that on which the prisoner will have served one half of his or her sentence and be released or, in the case of a long-term prisoner, considered by the Parole Board for release on parole licence. This means that the current maximum period a prisoner may be released on HDC licence is 135 days (121 plus 14 days) (approximately 4½ months) and the minimum period 14 days. However, by virtue of the Home Determination Curfew Licence (Amendment of Specified Days)(Scotland) Order 2008, which was passed by the Scottish Parliament on 12 March 2008, the relevant period has been increased to 180 days.

5. In terms of section 3AA(5) of the 1993 Act, specific exclusions prevent certain categories of offenders, e.g. sex offenders, those awaiting deportation or subject to an extended sentence or supervised release order from being released on HDC. All other prisoners will be subject to a robust risk assessment process undertaken by the prison service which will take account of issues such as previous history of violence etc.

6. The HDC provisions were initially commenced only in respect of short term prisoners (those serving less than 4 years in custody). At that time, the Home Detention Curfew Licence (Prescribed Standard Conditions) (Scotland) Order 2006 was made to specify the standard conditions which were required by section 3AA of the Act to be included in the HDC licence for short term prisoners.

7. The Management of Offenders etc (Scotland) Act 2005 (Commencement No. 4) Order 2008 brings into force the HDC provisions for long term prisoners (those sentenced to 4 or more years in custody) with effect from 21 March 2008 .

8. Section 12AA of the 1993 Act, inserted by section 15(10) of the 2005 Act, provides that a licence under section 3AA must include "the standard conditions" as prescribed by order by the Scottish Ministers.

9. Section 12AA(5) provides for different standard conditions to be prescribed for different classes of prisoner.

The standard conditions to be prescribed for short term prisoners are to:

- be of good behaviour and keep the peace;
- not commit any offence
- not tamper with or intentionally damage the electronic monitoring equipment or device(s) used to monitor compliance with curfew conditions or knowingly allow it to be tampered with or intentionally damaged; and
- allow access to the address specified in the licence to an employee of the electronic monitoring service provider to install, check, repair or replace the electronic monitoring equipment or device(s).

The standard conditions to be prescribed for long term prisoners are to:

- be of good behaviour and keep the peace;
- not commit any offence
- not tamper with or intentionally damage the electronic monitoring equipment or device(s) used to monitor compliance with curfew conditions or knowingly allow it to be tampered with or intentionally damaged;
- allow access to the address specified in the licence to an employee of the electronic monitoring service provider to install, check, repair or replace the electronic monitoring equipment or device(s);
- report within a specified number of days to local authority criminal justice social work services;
- be under the supervision of an officer nominated for this purpose by the Chief Social Work Officer of the relevant local authority
- comply with such requirements as the supervising officer may specify for the purposes of the offender's supervision;
- keep in touch with the supervising officer in accordance with instructions;
- inform the supervising officer of any change of address and provide details of any employment; and
- not travel outside the UK.

10. Some of the above conditions replicate the standard conditions imposed as conditions of parole, thereby enabling a seamless transition from HDC to parole in long term prisoner cases.

11. As well any prescribed standard conditions, an HDC licence must include a curfew condition complying with section 12AB of the 1993 Act. The curfew condition will require the prisoner released on HDC to remain at a place specified in the licence for a minimum of 9 hours per day. Compliance with the curfew condition will be monitored remotely by means of an electronic tag. This is over and above any specific conditions which the Scottish

Ministers have included in the licence under section 12 of the 1993 Act, including any which have been recommended for inclusion in the licence of a long term prisoner by the Parole Board. Non-compliance with any licence conditions may result in revocation of the licence and the prisoner's recall to custody.

Purpose of this order

12. The purpose of this order is to prescribe the standard conditions to be applied to all Home Detention Curfew licences, for both short and long term prisoners, alongside the curfew condition imposed by section 12AB, which will be electronically monitored. In consequence, the order revokes the Home Detention Curfew Licence (Prescribed Standard Conditions) (Scotland) Order 2006 which prescribed standard conditions for short term prisoners released on HDC licence.

Consultation

13. We consulted the Association of Directors of Social Work, the Scottish Prison Service, Association of Chief Police Officers in Scotland and the Parole Board Executive on the purpose of the Order prior to drafting. These agencies are currently working with Scottish Government officials to develop the operational processes which will underpin this order.

Financial Effects

14. Serco Ltd have been contracted to carry out electronic monitoring services on behalf of the Scottish Government. By freeing up around 50 additional prisoner places, the extension of HDC provisions to long term prisoners and the extension of the maximum duration of HDC from 4½ months to 6 months (already agreed by Parliament) will incur additional electronic monitoring costs of approximately £325,000 per annum.

15. There will also be additional costs for criminal justice social work in relation supervision costs for long term prisoners granted HDC. These costs will be approximately £95,000 per annum?

16. Financial provision will be met from the Criminal Justice Directorate budget.

17. A regulatory impact assessment has not been prepared in this instance as these regulations will have no impact on Scottish businesses other than Serco Ltd who have been contracted to deliver the service in Scotland and employ staff in order to do this.

Criminal Justice Directorate
Community Justice
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