

## Home Detention Curfew

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### ***What is Home Detention Curfew (HDC)?***

HDC, more commonly known as “tagging,” is the means by which some prisoners may spend a proportion of their sentence confined to their home during a specified period of the day, usually for 12 night time hours. The prisoner on HDC has to wear an electronic tag, normally around an ankle for the duration of the HDC. The tag emits an electronic signal which is monitored by a private company contracted to the Prison Service to ensure the prisoner does not breach the curfew. The maximum period of HDC is 135 days (4½ months), unless your sentence is shorter than 18 months, in which case the maximum HDC period will be equivalent to a quarter of the total sentence.

### ***How do I know if I am eligible for HDC?***

Prisoners serving sentences of 3 months or over but less than 4 years under the Criminal Justice Act 1991, or Standard Determinate Sentences of any length under the CJA 2003, are eligible to be considered for HDC. However there are several qualifications to this. Some groups of prisoners are ruled out of the system altogether and are ineligible to apply. Others (including those serving 4 years+ under the CJA 2003) are ‘presumed unsuitable’ unless there are ‘exceptional circumstances’ (see PSI 31/2003).

At the other end of the spectrum, some low-risk prisoners are presumed to be automatically suitable for HDC unless there are compelling reasons why it should not be granted (see PSI 19/2002 and 39/2002).

### ***Ineligible prisoners***

- are convicted of a violent offence and currently serving a sentence which requires extended supervision
- are serving a sentence for failing to return to custody following a temporary release
- have failed to comply with a requirement of a curfew order
- have at any time been recalled to prison from a HDC (except in the case of a successful appeal)

- have less than 14 days left before the halfway point in their sentence.
- have at any time been returned to prison under Section 40 of the CJA 1991 (return to custody for committing an offence before the previous sentence has expired).

### ***Presumed unsuitable unless there are ‘exceptional circumstances’***

Current convictions:

- Homicide related including manslaughter, attempted murder, threats to kill, conspiring, aiding or inciting murder and death by reckless driving
- Causing explosions, placing explosives, possessing explosives
- Possession of offensive weapons
- Possession of firearms with intent
- Cruelty to children
- Racially aggravated offences
- Terrorism (added by PSI 08/2008)
- CJA 2003 sentence 4 years or more

Current or past convictions:

- Any sexual offence (excluding prostitution, soliciting, consensual adult homosexual activity)

### ***Presumptive HDC***

Applies to short term prisoners (i.e. 3 months to under 12 months) who do not have a history of violent, sexual, or drugs offending. There is a presumption that all prisoners meeting the eligibility criteria for the scheme will be released on HDC at their normal eligibility date – unless there are exceptional and compelling reasons not to do so.

The following offences render a prisoner excluded from presumptive HDC:

- *ABH or attempted ABH*
- *Administer poison*
- *Aggravated Burglary*
- *Arson*
- *Assault court/prison officer/police officer*
- *Assault w/i to cause GBH*
- *Assault w/i resist arrest*
- *Common Assault*
- *False Imprisonment*

- *Harassment*
- *GBH/wounding or attempted GBH*
- *Kidnap*
- *Riot, Violent disorder, Affray, Threatening/Disorderly Behaviour and other violent Public Order Act offences*
- *Robbery or assault w/i to rob*
- *Any other violent offence*
- *Any sexual offence*
- *Any current drugs offence (previous convictions for drug possession do not exclude prisoners from presumptive HDC).*

### ***Risk assessment***

Unless they have requested not to be considered, prisoners must normally be released on HDC unless there are substantive reasons for retaining them in custody until their conditional or automatic release date. These reasons must fall under one of the five headings below:

- unacceptable risk to the victim or to members of the public;
- a pattern of offending indicating likelihood of re-offending during the HDC period;
- likelihood of failure to comply with the conditions of the curfew;
- lack of suitable accommodation for HDC;
- shortness of the potential curfew.

### ***Default terms for confiscation orders***

Prisoners with confiscation orders default terms are not eligible for HDC on the default term. Prisoners who were HDC-eligible on the principal sentence may have the default term commence on the HDC date if they have been granted HDC.

### ***HDC and multiple short sentences***

On 30 June 2010 the Supreme Court issued a judgment (*R (Noone) v the Secretary of State for Justice*) that fundamentally changed how the legislation must be applied to prisoners serving concurrent or consecutive determinate sentences under a mixture of Acts (i.e. Criminal Justice Act 1991 and Criminal Justice Act 2003).

The case involved a prisoner who was serving a 2003 Act sentence with a consecutive 1991 Act sentence of less than 12 months. In accordance with the provisions that applied at the time, the HDC eligibility period was calculated on the consecutive 1991 Act sentence only, and was, therefore, relatively

short. The Supreme Court decided that it was unfair for mixed Act prisoners to have shorter HDC periods just because their sentences could not be aggregated or single termed in the same way as those subject to multiple sentences under just one Act could be.

The Court therefore amended the transitional provisions of the 2003 Act Commencement Order so that mixed Act sentences can now be aggregated. This means that the HDC eligibility period in such cases (and, similarly, the Early Removal Scheme (ERS) date) is now calculated on the aggregate of the sentences. This results in a longer eligibility period than when it was based only on the last of the sentences handed down by the court. The order of the sentences is, therefore, no longer relevant for the purpose of calculating HDC or ERS eligibility dates.

This is a significant departure from how mixed Act sentences were previously calculated and impacts on a number of prisoners who will need to have their dates recalculated. For some, this will immediately result in a new HDC eligibility date that has already passed, or is imminent.

The aggregation also affects Sentence and Licence Expiry Dates and, in some cases, increases the length of licence which prisoners are subject to on release.

### ***Appeals against refusal of HDC***

There is no specific appeals procedure; however an appeal may be pursued via the complaints system (COMP1 and COMP1A), then to the Prisons and Probation Ombudsman, Ashley House, 2 Monck Street, London SW1P 2BQ (who has agreed to treat such appeals as urgent.) It is possible in some circumstances to judicially review a refusal to grant HDC. In order to prepare an appeal you are entitled to a copy of the reasons for the HDC refusal and copies of all reports upon which the decision was made.

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