

# Home Detention Curfew

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## SELF HELP TOOLKIT

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# PRISONERS' ADVICE SERVICE

THE INDEPENDENT LEGAL CHARITY PROVIDING INFORMATION AND REPRESENTATION TO PRISONERS

## Home Detention Curfew

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### SELF HELP TOOLKIT

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

Home Detention Curfew (HDC) is often called 'tagging'. It is a scheme by which a prisoner can be released 'early' subject to an electronically monitored curfew.

If you are released on HDC, you will be required to wear an electronic tag, normally around your ankle. This emits an electronic signal, which is monitored by a private company contracted by the Her Majesty's Prison and Probation Service (HMPPS) to ensure you do not breach the curfew. Since April 2019 there is an option of imposing 'location monitoring' as part of the HDC licence, along with the curfew requirements.

HDC was first introduced in 1999 (under an amendment to the Criminal Justice Act 1991 contained in the Crime and Disorder Act 1998). These provisions were replaced by similar ones under the Criminal Justice Act 2003. Most recently the legal framework for the scheme was amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

Until 2019 guidance on HDC was contained within ten different PSI and PSO documents; however these have now all been consolidated into the Home Detention Curfew Policy Framework, which is available on the government website and should also be held in all prison libraries.

#### ***Am I eligible for HDC?***

Not everyone is eligible for HDC. Whether you are eligible or not will depend on a number of factors including the length of your sentence, the offence(s) for which you are in prison, any previous offences or your behaviour both on this sentence or any previous sentences. You do not need to apply to have your eligibility for HDC assessed. The prison should do this automatically.

## ***Who cannot get HDC?***

Some groups of prisoners are ruled out of the system altogether and are **ineligible** to apply. Other prisoners will be **'presumed unsuitable'** (see below).

You will be ineligible for HDC if you have been sentenced in the UK to serve a term of 4 years or over. It does not matter what your individual circumstances are. This is the case whether your 4-year term is a single sentence or is made up of a number of shorter sentences.

You will also be ineligible if you:

- Are a sex offender required to register.
- Are convicted of a violent or sexual offence and currently serving an extended sentence.
- Are serving a sentence for ROTL failure to return.
- Are serving a sentence for breach of the curfew requirement of a Community Order.
- Are a foreign national prisoners (FNP) who has been recommended for deportation by the court or who is liable to deportation and a decision to deport has been served (i.e. not just those with a Deportation Order).
- Have less than 14 days to your CRD from the date of your sentence.
- Have ever been recalled to prison for failing to comply with the HDC curfew conditions.
- Have ever been returned to custody by the court for committing an imprisonable offence during the at-risk period.
- Are currently serving a recall from early release on compassionate grounds.

In addition, you will also be ineligible if your remaining sentence is so short that even if you were granted HDC, the period you would spend on tag would be less than 10 days.

## ***I am not ineligible - but is my application going to be 'presumed unsuitable'?***

If you are convicted of certain offences, you will be 'presumed unsuitable'. This means an application for HDC will not be granted unless there are 'exceptional circumstances'.

It is important to note that these are 'categories' of offence so there will be a number of offences that come within each of the categories.

You will be presumed unsuitable if you are currently serving a sentence of imprisonment for any of the following:

- Homicide (including death by reckless, dangerous or careless driving, aggravated vehicle-taking resulting in death)
- Explosives related charges
- Terrorism
- Possession of offensive weapons
- Possession of firearms with intent
- Cruelty to Children
- Offences aggravated on the grounds of race, religion or sexual orientation

You will also be presumed unsuitable if you:

- Have a history of sexual offending but are not required to register.
- Have been recalled for poor behaviour while on HDC.
- Are a foreign national prisoner where
  - Home Office Immigration Enforcement (HOIE) are still considering deportation action,
  - HOIE have issued an authority to detain (IS91) or
  - HOIE confirm that they intend to issue an IS91 if you are released from prison.
- Have been sentenced to 4 years or more imprisonment by an overseas court but have less than 4 years to serve after repatriation to the UK.
- Are a Category A prisoner.

### ***How do I appeal against a presumed unsuitable decision?***

The presumption of unsuitability is very difficult to overturn; it is hard to demonstrate that 'exceptional circumstances' apply. Each case must be considered on its own merits but there are only very limited grounds for claiming your case is exceptional. An example which was given in previous PSIs of the type of circumstances needed is:

- It is believed that the likelihood of you re-offending whilst on HDC is extremely small and;
- You have no previous convictions and;
- You are considered infirm either because of disability or age.

For foreign nationals, other factors that might negatively render a prisoner unsuitable are listed in the HDC – FNP form as follows:

- removal from the UK is imminent,
- the prisoner has a history of failing to comply with immigration conditions or has previously absconded,
- the prisoner has a history of verbal/documentary deception to gain leave to enter/remain or evade removal from the UK,
- the prisoner has failed to produce evidence of their nationality or identity or is otherwise failing to comply with the directions of immigration enforcement
- Another factor that might positively affect suitability for an FNP listed in the text of the HDC – FNP form is “Removal from the UK [...] is unlikely in the foreseeable future”.

If you are presumed unsuitable for HDC but think that you have an argument that your case involves exceptional circumstances, you may submit representations to the governing governor. How the governor then assesses whether there are exceptional circumstances will depend on the reason why you are presumed unsuitable.

If the governor is satisfied that there are exceptional circumstances, you will be considered for HDC as normal.

Where the governor does not accept that the representations amount to exceptional circumstances, you should be given clear, detailed reasons why and the avenue for appeal is via the prison complaints system.

### ***What if I am subject to a Confiscation Order?***

If you have been given a default sentence as a result of a Confiscation Order you will be ineligible for HDC while you are serving that default term. However there are some circumstances when you can still get HDC on your main sentence. Please refer to the PAS Information Sheet on Confiscation Orders.

### ***I am eligible and not presumed unsuitable - how do I apply for HDC?***

For prisoners serving sentences of 12 weeks or over but less than 4 years' imprisonment, eligibility and suitability for HDC will be considered automatically by the prison and once these have been considered the process will commence, so you do not need to apply.

**Your release date and HDC eligibility should be calculated within five working days of reception and the prison should inform you of this in**

**writing using the HDC Eligibility Notification Forms.** You should then receive a Proposed Address Form at least 10 weeks before your HDC eligibility date, or sooner if you are serving a very short sentence. This allows you to nominate a proposed address for release. You may also opt out of the HDC process at this point and will need to give a reason as to why you do not want HDC if this is the case.

If you have not been invited to submit a suitable address when there is less than **10 weeks to go** before your HDC Eligibility Date (HDCED), you should make enquiries of your offender supervisor. Otherwise your application may not be completed before your HDCED and your release might be delayed.

Although the aim is to complete the process before the HDC eligibility date, this is not always possible and in some cases, the process will start after the eligibility date.

Address checks will then be completed and a decision will be made about whether any exceptional reasons exist to refuse your HDC. If not, HDC will be granted.

The Framework document contains the following useful time-table:

<b>Timing</b>	<b>Action</b>
Within 5 working days of sentence calculation	Identify HDC eligibility and presumed unsuitability. Notify offender using HDC Eligible/HDC Presumed Unsuitable/HDC Not Eligible/HDC Not Enough Time forms Provide copy to responsible officer (RO) and Through The Gate (TTG) provider in the prison.
Thirteen weeks before HDCED	In relevant cases, case admin submits HDC-FNP to Home Office Immigration Enforcement (HOIE) - requiring return within 20 business days - to establish current immigration status and HOIE intentions on removal and detention
Ten weeks before HDCED	Offender given and supported to complete HDC Address Form, providing details of their proposed release address or opt out notification.
Nine weeks before HDCED	Case Admin completes Part 1 of HDC Address Checks form and invites RO to complete Part 2 within 10 business days.
Seven weeks prior to HDCED	RO returns completed HDC Address Checks form, confirming informed occupier consent and electricity supply, reporting instructions, details of contact in VCS cases, and any non-standard licence conditions and outstanding risk management plan actions.
Six weeks prior to HDCED	Offenders being released to BASS accommodation must be referred to Local Authorities, as there is a likelihood of moving on from BASS accommodation as homeless
Five weeks prior to HDCED	HDC Assessment and Decision form completed. Decision-maker considers whether there are exceptional reasons to refuse or postpone HDC, and, if not, authorise release.
Three weeks prior to	If necessary, case admin checks with RO about outstanding risk

HDCED	management plan actions
Two weeks prior to HDCED	Offender, RO, police and the EM provider to be informed of decision on HDC
Day of release (on or as soon after HDCED as possible)	Copy of the licence to be sent to RO, police and EM provider

***How do I know if my release address is ‘suitable’?***

The basic initial requirement for a release address is that it is technically suitable for the installation of the electronic tagging equipment. This means that a property without a fixed or metered electricity supply would not be suitable. The monitoring equipment will usually operate via the mobile cellular network. It will only need a dedicated telephone line to be fitted if the mobile signal at the address is poor.

The next step will be for your offender manager (your outside probation officer) to assess the suitability of the proposed release address. They must decide whether they think that the address is suitable taking into account a number of other factors. This will include considering whether, if you are released to that address, the risk you would pose to the public (including those living at or in the vicinity of the address) would be unacceptable. They will also have to assess whether releasing you there will pose an unacceptable risk of you reoffending or would suggest a probability that you would fail to comply with the conditions of curfew at that address.

If at any stage of the assessment, the proposed release address is considered unsuitable, you should generally be asked to provide an alternative one. This may hold up the process, so you should try to be aware of any possible issues in advance and either not suggest an address that is likely to be rejected, or have an alternative ready in case there is a problem.

Your address must be confirmed as suitable by both probation and the prison at least two working days prior to your release to it, in order to allow time for the licence to be drawn up and the contractors to install the equipment.

There is specific guidance in relation to prisoners from the Gypsy and Traveller communities, which states that although static caravans can constitute a suitable address, if someone frequently moves their caravan this is unlikely to be deemed a suitable address and alternative accommodation will need to be sought.

***What happens if I am suitable for HDC but don’t have an address?***

If you do not have an address which has been considered suitable (or if, after release, you can no longer stay at an address to which you have been released on HDC) you can apply for accommodation to be provided via the Bail Accommodation and Support Service (BASS). This is an organisation run by a housing provider, Stonham, by arrangement with Her Majesty's Prison and Probation Service.

BASS accommodation consists of shared flats or houses, in which you have your own bedroom; furniture and bedding are provided and on arrival you will be provided with food for the first day, toiletries and a basic pay-as-you-go phone. BASS accommodation can be with support and also with children.

### ***Why might my HDC be refused or postponed and what can I do about this?***

HDC will be refused where:

- The decision maker concludes that 'it is not possible to manage the offender safely at the proposed address';
- There are fewer than 10 days remaining to your CRD.

If the second of these applies there is nothing you can do about it; however if the first is the case you can appeal using the complaints procedure.

The HDC decision will be postponed where:

- Specific public protection measures have been identified and planned to manage a risk that you are considered to pose in the community but these are not yet in place;
- You have been referred to the police, other law enforcement agency or the independent adjudicator (IA) in relation to an alleged offence committed during your current sentence and the matter remains unresolved;
- You are the subject of a confiscation order and the HDC decision-maker thinks that there is an unacceptable risk of you frustrating the order of the court by, for example, going to ground, leaving the jurisdiction or hiding assets if released on HDC. Where there is evidence that you have frustrated proceeds of crime proceedings in order to avoid a confiscation order being imposed, HDC will also be postponed until that is resolved.

If you are found guilty by a court or IA of an offence committed during the current sentence, you must then serve the penalty imposed before you can

be released on HDC. Where added days are awarded, the release dates must be adjusted accordingly. Where a further sentence of imprisonment is imposed concurrently, fresh release dates will be calculated in relation to the new sentence and, if you remain eligible for HDC, you must be considered for release on or after the latest HDCED. Where a further sentence is imposed consecutively, fresh release dates (including a new HDCED) will be calculated for the aggregate created. If you remain eligible for HDC, you must be considered for release in line with the new HDCED.

If your IA or court proceedings have concluded and your application appears not to be being progressed, you should submit an application or complaint form with an update to remind the prison that your circumstances are now resolved.

### ***What happens if I move prison?***

Ideally you should not be transferred whilst an HDC assessment is underway. However, in practice this does happen reasonably often.

The Framework document says that governors must ensure that there is a process in place so that all Offender Management Unit (OMU) paperwork, including that for ongoing HDC, is sent with a prisoner who is moving as part of a planned transfer, and the responsible officer (RO) must be notified of the transfer and where the completed Address Checks form should now be sent.

If this fails for any reason, the sending OMU must contact the receiving OMU, inform them of the HDC stage that has been reached and make sure that any paperwork not recorded on NOMIS and any reports received after transfer are forwarded as a priority.

### ***How long can I get HDC for?***

The maximum HDC period is currently 135 days (4½ months). When the scheme was first introduced the maximum period was 60 days. This was then increased to 90 and then to the current 135 days.

There have been repeated rumours within the prison system that the tagging period will be extended to six or nine months or that the scheme will be extended from prisoners serving less than four years to those serving up to six, or some other formulation. However, we are not aware of any intention on the government's part to increase either the number of days for which you can get HDC or the length of sentence to which it can be applied.

You must serve at least a quarter of your sentence before being released on HDC and cannot be released until you have served at least 28 days. The table below gives more detail on this:

<b><i>Sentence Length</i></b>	<b>Requisite Period to be Served before HDC Eligibility Date</b>
12 weeks or more but less than 16 weeks	28 days
4 months or more but less than 18 months	One quarter of the sentence
18 months or more but less than 4 years	135 days less than half the sentence.

Although you cannot be released on HDC before your HDCED, it is very common for prisoners who are granted HDC to be released later than that date – sometimes by weeks or even months, due to remand or delays in the assessment process. This can be very frustrating. However, other than chasing up the HDC clerk and any other people who are involved, such as your probation officer, there is probably little you can do about this as the courts have recognised that, provided the delays are reasonable, NOMS will have discharged its duty.

That said, in very specific circumstances where the prison’s errors have resulted in HDC release being delayed, you may have redress. In the case of *McCreaner v MOJ* [2014] a former prisoner was granted damages for the six weeks he was detained after he should have been released on HDC, on the basis that the prison had been negligent in failing to give his application the priority the policy demanded.

### ***What happens when I am granted HDC?***

You will be notified that you have been granted HDC. The prison will then notify the electronic monitoring provider within 14 days of your HDCED that they need to be prepared to go to your address to install the equipment and meet you there to fit your tag. However it is accepted that this is very often not possible. In any case, there needs to be a minimum of 24 hours’ notice.

You will then be released on a standard HDC licence, which you will have to sign to say you accept the terms set out in it. You will be fitted with an electronic tag and subject to a curfew whereby you need to remain in your home, usually for 12 hours a day, from 7pm to 7am. In specific circumstances, such as work arrangements, the hours can be varied. However, the curfew period should not fall below 9 hours per day, other than on the first day of release.

Occasional variations can also be made for specific events. Some such variations can be authorised by the contractor but others, together with any general changes either to the hours or the address, need to be authorised by the Governor of the prison you were released from.

If an employer wants you to work hours that conflict with your curfew (and remember travelling time) ask them to put the request in writing and tell them that you will need to rearrange things first and this may take some time. Then ask your offender manager and the prison to consider the request as a priority. It is **absolutely essential** that you wait to get the curfew hours on your licence varied by the governor before working the new hours. If you don't, you may end up recalled to prison even if you were working (see below).

### ***What happens if I am refused HDC? Can I appeal?***

There is no specific appeals procedure. However you can 'appeal' via the complaints system, up to the Prisons and Probation Ombudsman. At all stages of the process, the appeal must be treated as urgent.

For your appeal you are entitled to the reasons for the refusal and copies of all relevant reports.

### ***Can I get legal representation or advice? Is legal aid available?***

Unfortunately, since the cuts to legal aid in December 2013, there is very limited provision for legal aid to fund legal advice or representation in prison law. Although Legal Aid has since been restored to some areas of prison law, it does not cover HDC applications or reviews. Unless you either pay a legal representative or find one who will assist you for free, you will have to do any work in the run-up to your HDC application yourself. There are some law firms that will do such cases for relatively low fees.

The same also applies to most appeals against HDC refusal, although in some very specific and limited situations, legal aid might be available under the Legal Help scheme, or through the issuing of a legal aid certificate to investigate the merits of judicial review.

### ***What happens if I breach my curfew or licence?***

Once you have been released on HDC, if you breach your licence it may be revoked and if it is, you will be recalled to prison. This can happen either on the grounds of a breach of the curfew condition itself or because of a more general licence breach, of the type which would be likely to see you recalled to prison from a licence which did not involve electronic tagging.

You can submit an appeal against curfew breach and should be given an appeals pack by the prison shortly after recall. If your appeal is successful you will be released back on to your tag; if not, you will remain in custody until the half-way point of the sentence (i.e. the point you would have been released if you had not been granted HDC).

If you are recalled purely because you could no longer be monitored at your approved address through no fault of your own, you can be re-released to a new address without appealing. So, although you may appeal it will generally be much quicker to work to get a new address cleared. Once it is, you can be re-released on HDC.

If you are recalled for a more general licence breach, there are two types of recall:

### **Fixed Term Recall**

You will be released after 28 days (14 days for sentences under 12 months), either back onto HDC if there is sufficient time and you have a suitable address, or under the licence which relates to the remainder of your supervision period.

### **Standard Recall**

You will remain in custody until the end of your sentence (SED) unless you successfully appeal against your recall or the Parole Board or Secretary of State directs that you should be released on licence prior to that point.

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# PRISONERS' ADVICE SERVICE

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