

Home Detention Curfew

SELF HELP TOOLKIT

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What is Home Detention Curfew (HDC)?

Home Detention Curfew (HDC) is often called 'tagging'. It is a scheme by which some prisoners on standard determinate sentences 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 and a 2023 Statutory Instrument.

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.

Who cannot get HDC?

Some groups of prisoners are ruled **ineligible** to apply. They will not be released on HDC in any circumstances. Other prisoners will be '**presumed unsuitable**' and will only be released if there are exceptional circumstances. (see below)

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 type and 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.

Prisoners who are ineligible for HDC

You will be ineligible for HDC if you:

- Are on an EDS or SOPC sentence.
- 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.
- Are on a sentence for specific terrorist or terrorist connected offences
- Are on a term of imprisonment for fine default or contempt.
- Are subject to a hospital order, hospital direction or a transfer direction under the Mental Health Act 1983.

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.

Prisoners who are eligible but 'presumed unsuitable'

Even if you are not ruled out of HDC on the grounds that you are ineligible, you may not get HDC. Some prisoners are 'presumed unsuitable', which means an application for HDC will not be granted unless there are 'exceptional circumstances'.

You will be presumed unsuitable if you are currently serving a sentence of imprisonment for any of the following categories of offence: (It is important to note that there will be a number of offences that come within each of the categories.)

- 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
- stalking, harassment, coercion and control, and non-fatal strangulation and suffocation offences. These offences include breach of restraining or non- molestation order, disclosing private sexual photos and films with intent to cause distress
- Covid 19 related offences

You will also be presumed unsuitable if you:

- Have a history of sexual offending but are not required to register.
- Have been recalled for failing to comply with HDC curfew conditions within two years of the date of sentence for the current sentence.
- Are a foreign national prisoner liable for deportation but not served with a notice to deport, ie:
 - 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.
- Are a Category A prisoner.
- Have a history of terrorist or terrorist connected offending.
- Are serving a sentence subject to two thirds release.
- Have had your sentence referred to the Parole Board by the Secretary of State under section 244ZB of the Criminal Justice Act 2003.
- Are serving a sentence where your release is governed by the preserved Criminal Justice Act 1991 release provisions for long-term prisoners.

Multiple sentences

If any of the sentences you are serving is for an ineligible offence then you cannot be released during the sentence for that offence and will be presumed unsuitable for the remainder of your sentence.

If one of your sentences is an EDS or SOPC then this will be treated as an ineligible SDS sentence and you will be presumed unsuitable for the remainder of your sentence.

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.

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.

Exceptional circumstances for particular categories of offender

The policy framework sets out relevant considerations for different categories of offender:

i) Prisoners with a history of sexual offending

Governors will consider the nature of the offence(s), how long ago they were committed, the age of the offender and victim at the time

ii) Foreign nation prisoners liable for deportation but who have not been issued with a decision to deport

Governors must take into account the information received from the Home Office about the offender's current immigration status. Each case will be considered on its merits.

An example of exceptional circumstances mentioned in the policy framework is where Immigration Enforcement has confirmed that 'deportation is unlikely to be effected for the foreseeable future, and they do not intend to detain the prisoner on release from prison'.

However, the prisoner would be unlikely to be released on HDC if any of the following apply:.

- there is information to suggest that the prisoner is unlikely to remain at the HDC address in order to evade immigration proceedings
- 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.

iii) Other prisoners presumed unsuitable

It is not expected that many prisoners who are presumed unsuitable will be released on HDC so the circumstances will have to be so compelling that the case really stands out. The prisoner must pose a low risk of serious harm and re-offending but this is not sufficient. Additional factors are necessary such as:

- the health of the prisoner or their family such that early release would have a significant positive impact, or
- exceptional progress

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, 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 (HDCED), or sooner if you are serving a very short sentence. This allows you to nominate a proposed address for release.

You should be encouraged to complete the proposed address form and if you have no address to nominate you should be encouraged to consider CAS2 accommodation as an alternative.

You may also opt out of the HDC process at this point and will be asked 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 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 HDCED, this is not always possible and, in some cases, for example where the sentence is very short, the process might start after the eligibility date.

Timetable

The Framework document contains the following timetable:

Timing	Action
Within 5 business days of sentence calculation	Identify HDC eligibility and presumed unsuitability. Notify offender using one of the HDC Eligible/HDC Presumed Unsuitable/HDC Not Eligible/HDC Not Enough Time forms. Provide copy to COM, VLO and Pre-Release Team 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 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 pages on Digital Service and invites COM to complete Risk Management page within 10 business days.
Seven weeks before HDCED	COM completes Risk Management page, confirming: whether it is possible to manage the offender safely on HDC; 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 before HDCED	Offenders being released to CAS2 accommodation must be referred to Local Authorities, as there is a likelihood of moving on from CAS2 accommodation as homeless.
Five weeks before HDCED	HDC Assessment and Decision page completed. Decisionmaker considers whether there are exceptional reasons to refuse or postpone HDC and, if not, authorise release.
Three weeks before HDCED	If necessary, case admin checks with COM about outstanding risk management plan actions.
Two weeks before HDCED	Offender, COM, police and the EM provider to be informed of decision on HDC
Day of Release or as soon after HDCED as possible	Copy of the licence to be sent to COM, police and the EM

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 Nacro Community Accommodation Service (CAS-2).

CAS-2 accommodation consists of shared flats or houses, in which you have your own bedroom. Families can be accommodated if needed. Support officers visit to give support and ensure licence conditions are being kept. Assistance can be given to find follow on accommodation.

Prisoners who have a caution, conviction or allegation for a sexual offence in schedule 3 of the Sexual Offences Act, and those who are assessed as posing a high risk of harm will not be considered for CAS-2 accommodation.

Assessment and Decision

Once the Address Checks form has been returned, information must be requested from the police and children's services about domestic abuse and child welfare. Your POM must be asked about your current progress in custody. Your HDC application will then be assessed and the decision whether to release you on HDC will be made.

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

Release for those suitable for HDC will be authorised unless the following apply:

- There is no suitable release address
- It is not considered possible to safely manage your early release in the community
- There are less than 10 days to your CR
- The Governor considers your release would seriously damage public confidence

BUT, the HDC decision will be postponed where:

- specific public protection measures have been identified and planned to manage risk in the community but they are not yet in place;
- you have been referred to the police or other law enforcement agency or to the independent adjudicator (IA) in relation to an alleged offence committed during the current sentence and the matter remains unresolved;
- you are subject to a confiscation order and the decision-maker thinks there is an unacceptable risk of you frustrating the court order if released on HDC, 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.
- You are in segregation (except for your own protection)
- There is an outstanding application under the undue leniency scheme

If your IA or court proceedings have concluded or you are no longer in segregation 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.

If you are held in segregation (except for your own protection), you will not be released on HDC until compliance has been tested on ordinary location for at least 7 days prior to release, and the Governor has approved.

What happens if I move prison?

Ideally you should not be transferred whilst an HDC assessment is underway. However, in practice this does happen quite 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 180 days (6 months). When the scheme was first introduced the maximum period was 60 days. This was then increased to 90, then to 135 days and then to the current 180 days.

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. The 'requisite custodial period' refers to the period the offender is required to serve in custody from date of sentence to the earliest release point.

Days in requisite custody period	Requisite period to be served before the HDCED	Approximate range of minimum and maximum curfew periods	HDCED calculation
42 days to 359 days	28 days OR one half of the requisite custodial period, whichever is longer	Between 2 months and 6 months depending on length of sentence	<ol style="list-style-type: none">1. Requisite custodial period \div 2 (round up) = days to serve.2. If this calculation provides a number less than 28 days, use 28 days as the days to serve.3. Days to serve minus remand/tagged bail days. <p>To calculate HDCED, take the actual date of sentence, and add the number of days obtained in step 3.</p>
360 days or more	180 days before CRD	180 days	<p>Effective* CRD minus 179 days = HDCED.</p> <p>*effective CRD will already include remand/tagged bail days, etc.</p>

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 delays in the assessment process. This can be very frustrating.

If this happens you should try to speak to the HDC clerk and any other people who are involved, such as your probation officer, and ask them why there is a delay and politely ask them to do what they can to expedite your application. You can also make a prison complaint and if necessary escalate this with a COMP1A and then a complaint to the Prisons and Probation Ombudsman. You would probably not have grounds for a legal challenge since the courts have recognised that, provided the delays are reasonable, HMPPS will have discharged its duty.

However, in some circumstances where the prisoner's release on HDC is unreasonably delayed due to the negligence of the prison, there may be grounds for a claim for damages. 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.

PAS can give free advice on HDC.

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.

If you require further assistance, please contact PAS

PAS offers free legal advice and information to prisoners throughout England and Wales regarding their rights, conditions of imprisonment and the application of the Prison Rules.

We pursue prisoners' complaints about their treatment in prison by providing advice and information and, where appropriate, taking legal action.

Examples of issues we can advise on include: parole, temporary release, indeterminate sentences, categorisation, adjudications, sentence calculation, licence and recall, discrimination, resettlement and healthcare matters. We also provide advice on Family Law to female prisoners and on Immigration Law to prisoners with issues relating to detention or deportation.

If you have something that you'd like to discuss with one of our Caseworkers, you can:

Write to us at
Prisoners' Advice Service
PO Box 46199
London EC1M 4XA
(Mark your envelope Legal Mail Rule 39 in all correspondence with PAS)

Call us Monday, Wednesday or Friday
between 10am and 12.30pm or 2pm and 4.30pm on
020 7253 3323

We produce the Prisoners' Legal Rights Bulletin, three times a year. This shares information about key cases and changes in Prison Law. It is free to prisoners. To sign up for this, please write to the address above.



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