

## Home Detention Curfew

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

HDC, often called ‘tagging’, is the means by which some prisoners on standard determinate sentences over 12 weeks and under 4 years can be released early with an electronic tag, usually attached to their ankle. They must spend a set period of at least 9 hours in every 24 hours confined to their home. This is usually 12 hours over night

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. Sometimes the tag can monitor your location as well as compliance with the curfew.

The HDC Policy Framework sets out full guidance.

The general rule is that you have to serve at least a quarter of your sentence before you can be released on HDC. The maximum HDC period is 180 days. If there are fewer than 10 days left to your CRD you will not be released on tag.

### ***Can I be released on HDC?***

The first stage in deciding whether to release a prisoner on HDC is to check if they are ineligible for HDC or ‘presumed unsuitable’ unless there are ‘exceptional circumstances’.

For standard determinate sentence prisoners serving sentences of 12 weeks or over but less than 4 years, eligibility and suitability for HDC will be considered automatically. You should not need to apply.

The prison must establish your eligibility for HDC within 5 days of your sentence calculation and should inform you of this in writing using the HDC Eligibility Notification Forms.

### ***Ineligible prisoners (statutorily excluded)***

- Anyone sentenced to less than 12 weeks or to 4 years or more
- Sex offenders required to register
- Those convicted of violent or sexual offences currently on an extended sentence
- Those on a sentence for specific terrorist or terrorist connected offences.
- Those on a sentence for ROTL failure to return
- Those on a sentence for breach of the curfew requirement of a Community Order
- Those with less than 14 days to CRD from date of sentence
- Those who have ever been recalled to prison for failing to comply with HDC curfew conditions

- Those who have ever been returned to custody by the court for committing an imprisonable offence during the at-risk period
- Those currently serving a recall from early release on compassionate grounds
- Those on a term of imprisonment for fine default or contempt
- Those subject to a hospital order, hospital direction or transfer direction under Mental Health Act 1983
- FNPs who are liable for removal, ie those who:
  - are liable for deportation under the Immigration Act 1971, s.3(5) and have been notified or under s3 (6) and deportation was recommended
  - have been notified of a decision to refuse leave to enter
  - are an illegal entrant
  - do not have leave to enter or remain and are therefore liable for removal under s.10(1) of the Immigration and Asylum Act 1999

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

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

Also presumed unsuitable:

- anyone with a history of sexual offending but not currently required to register (this includes current offences where the registration threshold has not been met)
- anyone with a history of terrorist or terrorist connected offending

- anyone who has been recalled during a previous HDC period HDC for reasons not linked to curfew breach
- Category A prisoners
- anyone on standard or fixed term recall during the HDC period
- anyone who has been recalled during a previous period of HDC for reasons not linked to curfew breach
- Prisoners originally sentenced to over 4 years in another country whose remaining sentence is under 4 when returned
- Foreign nationals who are liable for deportation but have not yet been served with a decision to deport.

### ***Multiple sentences***

If you are serving consecutive sentences and the length of the overall sentence is more than 4 years you will not be eligible for HDC.

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 the sentence. (But see below for default terms)

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 the sentence.

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

Prisoners with confiscation order default terms are ineligible for HDC on the default term but can get HDC on their main sentence in some circumstances.

### ***I am eligible and not presumed unsuitable. What happens next?***

You should receive an Address Form at least 10 weeks before your HDC eligibility date (HDCED), or sooner if serving a very short sentence. This allows you to nominate a proposed address for release. You should be encouraged to complete it 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.

A risk assessment and address checks will then be completed and a decision will be made about whether any reasons exist to refuse or postpone your HDC.

### ***Assessment and decision***

Once the Address Checks form has been returned, information must be requested from police and children's services about domestic abuse and child welfare. Your POM must be asked for information

about your current progress in custody. Release 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 CRD.

The HDC decision must 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.
- You are in segregation (except for your own protection)
- There is an outstanding application under the undue leniency scheme

HDC may also be refused if the Governor considers it would seriously damage public confidence.

### ***Release***

Although release should occur on or as soon after your HDCED as possible, it is often delayed. This is generally not challengeable. In the case of *McCreaner v MOJ* [2014] an ex-prisoner was awarded damages for 6 weeks detention after he should have been released on HDC where the prison had been negligent in failing to give his application the appropriate priority.

### ***Revocation of HDC***

HDC may be revoked and you will be recalled to prison if, whilst the curfew condition is in force, it appears that you have failed to comply with any condition included in your licence, or your whereabouts can no longer be electronically monitored at the place or for the time specified in the curfew condition.

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

There is no specific appeals procedure; however, appeals may be pursued via the internal complaints system, up to the Prisons and Probation Ombudsman, who will treat such appeals as urgent. For your appeal you are entitled to the reasons for refusal and copies of all relevant reports.

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