

insideinformation – fact sheet

Home Detention Curfew

Information courtesy of Parlby Solicitors Plymouth

The Home Detention Curfew Scheme (HDC) or 'tagging' is available to prisoners serving more than 3 months imprisonment but less than 4 years. It was introduced as a means of reducing the prison population, however recent queries from prisoners would seem to indicate that not all establishments are providing the same information. HDC can form part of your sentence plan and you will be released on HDC unless there are any reasons to suggest that the HDC conditions will not be complied with.

Those excluded from eligibility:

There are certain prisoners who will not be deemed suitable for HDC. These are prisoners who:

- Are serving an extended sentence;
- Are serving a sentence for being unlawfully at large (absconding/failing to return);
- Have previously breached a curfew order or were recalled for breaching the HDC scheme;
- Detained under mental health provisions;
- Subject to notification requirements under the Sexual Offences Act 2003;
- Liable for removal from the UK;
- ERD for HDC is less than 14 days from the halfway point of sentence.

On arrival at prison you will be informed of your HDC eligibility date. It is prudent to seek legal advice as soon as you become aware of your HDC date in order that representations can be prepared on your behalf.

Presumptive HDC eligibility:

Those prisoners who are not serving sentences for or have a history of violence including possession of a weapon, sexual or drugs offending will be presumed eligible for release on HDC. A recent amendment means that prisoners who have previous convictions for possession (without intent to supply) of drugs can still be considered for HDC. Release on HDC is of course subject to a satisfactory home check, i.e. that there is a continuous supply of electricity and access to a landline telephone, the property is in England and Wales, and the person with whom you intend to reside is also acceptable.

Presumed unsuitable for HDC:

There are of course certain types of offences which mean that a prisoner is presumed to be unsuitable and those offences are as follows:

- Murder, attempted murder, threats to kill, conspiring, aiding or abetting, death by dangerous driving;
- Causing explosions, placing of explosives and possession of explosives;
- Possession of offensive weapons;
- Possession of firearms with intent;
- Cruelty to children;
- Racially aggravated offences;
- Any sexual offence.

However, just because your offence may fall within the presumed unsuitable list does not necessarily mean that you could not be considered for HDC and you should contact your solicitor as soon as possible, who will be able to draft some representations on your behalf.

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Exceptional circumstances:

Where these rarely occur, it will be for the Governor to decide on whether or not the reasons are 'exceptional'. Risk of offending is not a reason to refuse an application for release on HDC under exceptional circumstances. For example, a person with no previous convictions who has committed one of the presumed unsuitable offences but where there are substantial mitigating circumstances. This also includes Category 'A' prisoners serving less than four years. In addition, where foreign nationals may be subject to IND reviews if you have submitted applications for your status to be considered you cannot be deported during that time, in which case your circumstances may well fall within the exceptional circumstances. It is important that you speak to an immigration lawyer to establish what applications you may be able to make prior to contacting a prison law lawyer to assist you with HDC.

Representations:

When contacting a solicitor to assist with your representations, you should provide the following information, as this will assist with the drafting:

- What your index offence was, when you were convicted and how long your sentence is;
- Whether you have previous convictions and what they were and when;
- What your proposed release address will be and with whom you will be residing;
- Confirmation of whether you have complied with your sentence plans and what, if any, additional courses you have undertaken;
- What your recent OASys risk level was calculated at;
- What IEP level you are and whether you have been involved in any adjudications;
- What employment you are in and whether that is a trusted position;
- Any other information you believe will assist your case to granted HDC; If yours is an exceptional circumstance – then the reasons why you believe so.

Assessment:

HDC suitability assessment takes place approximately 10 weeks prior to your eligibility date. The usual assessment is a standard suitability test and is carried out by probation. Information about you will be gathered from not only yourself (or via your solicitor's representations) but also a member of prison staff who has daily contact with you. Internal probation will also contact the probation office of the area into which you wish to be released, in order for a home visit to be undertaken and to consider if you are suitable for release on HDC. If you have been unfortunate enough not to have complied with previous curfew requirements then an enhanced assessment will need to be undertaken. This will involve a panel being convened, usually consisting of the Governor, seconded probation officer and a member of staff who has daily contact. The board will then consider your overall behaviour and engagement with prison regimes and sentence plans.

Release on HDC:

If your release has been deemed suitable then adults serving over 12 months will have their HDC expiry at the halfway point. You will then be subject to normal licence conditions until your sentence expiry. Youth offenders serving less than 3 months on HDC will also be required to have a notice of supervision to ensure compliance. If you do not comply with the HDC requirements you are still subject to recall to prison. If you are recalled you are entitled to appeal the decision and you should contact your solicitor as soon as possible for assistance in this regard. If you intend to appeal the recall, it is important that you make a statement to the prison making it clear that you intend to appeal. The deadline for this is the following day. It is important that you contact your solicitor immediately because representations must be submitted within 3 days of recall.

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Refusal to grant HDC:

There are five reasons upon which your application for release on HDC will be refused:

- An unacceptable risk to the victim or members of the public;
- A pattern of offending which indicates a likelihood of re-offending during the HDC period;
- A likelihood of failing to comply with curfew conditions;
- Lack of suitable accommodation;
- Shortness of potential curfew period (i.e. at least 14 days).

If the HDC application is refused, the written reasons must be given to you including any reports upon which the application was refused. This additional right was as a result of R v Home Secretary ex p Allen [2000]. It is important that you provide a copy of those papers to your solicitor as soon as possible. Your solicitor will then be able to consider appealing the decision on your behalf. Alternatively, you can complete a complaint (COMP) form. Governors are given guidance that any appeals submitted by solicitors should be dealt with as a priority. If the refusal is upheld then the solicitor can make a complaint to the Ombudsman to consider your case. If the application is refused again, and the solicitor/barrister believes that the reasons are not valid, then a judicial review could be undertaken to review the position.

IMPORTANT NOTICE

Information is given on a strictly 'without-liability' basis, and should be considered for use as guidance only. If you propose taking further action based upon this information you are strongly advised to take further and more specific legal advice before doing so.

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Fact Sheet Ref: HDC/Oct.09