

# Home Detention Curfew (HDC): expanding eligibility and improving efficiency



## Introduction

The Home Detention Curfew (HDC) scheme was introduced over two decades ago in 1999. The scheme enables eligible prisoners to serve the final 135 days of their custodial term in the community subject to electronic monitoring. The aim of the scheme is to assist the transition from custody to the community and ease population pressures on the prison estate.

In July 2019, the previous Conservative government acknowledged the benefits of HDC and introduced secondary legislation to increase the maximum length of the period which prisoners could spend on HDC in the community from 135 days to 180 days. In the impact assessment of the proposals, the Ministry of Justice identified the following benefits to expanding the eligibility criteria:

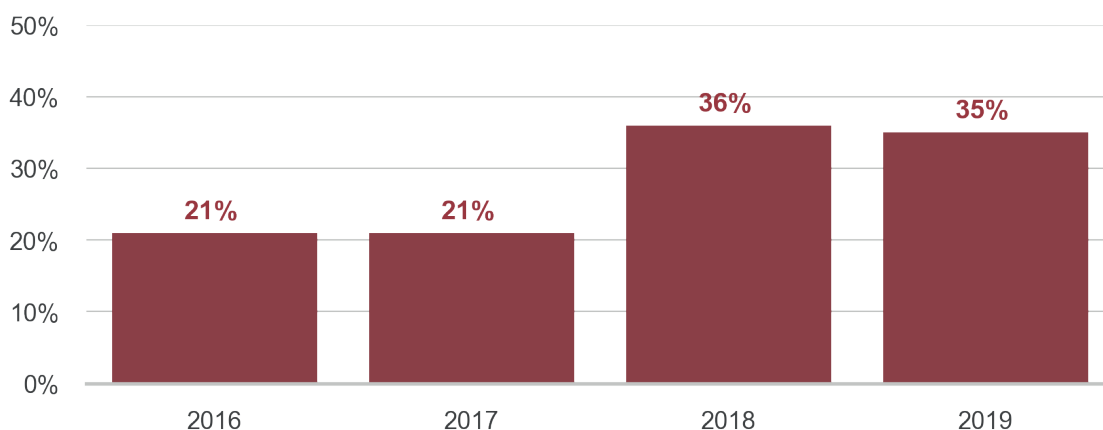
*Earlier resettlement will limit the harmful effects of custody and have a positive impact for offenders and their families; for example, earlier re-employment will allow them to support themselves and their families earlier in their sentence. Reducing the prison population will contribute to improving the conditions for both offenders and staff and enable prisoners to feel safer, calmer and readier to engage in their rehabilitation.<sup>1</sup>*

<sup>1</sup> Ministry of Justice (2019) [Extension of Home Detention Curfew period: Impact Assessment, The Criminal Justice Act 2003 \(Early Release on Licence\) Order 2019](#), London: Ministry of Justice

However, in May 2020, the current Conservative government withdrew the legislation. This is despite the positive benefits identified in the impact assessment of the proposals of improved resettlement outcomes and better treatment and conditions in prison.<sup>2</sup>

The impact assessment of the 2019 proposals stated that “the original policy intention [of the HDC scheme was] that most offenders eligible for the scheme should be released.”<sup>3</sup> However, the data shows that this is not currently happening, with just 35% of eligible prisoners granted HDC in 2019 (see Figure 1).

Figure 1: The proportion of the eligible population granted HDC



Source: Table A3.5, Offender Management Statistics, Prison releases 2019

Changes introduced in 2018 to streamline the process of applying for HDC contributed to a 15% increase in the proportion of people eligible for HDC being released compared to the previous year.<sup>4</sup> These changes contributed to a rise in the number of people released on HDC from around 2,200 at the end of 2017 to around 3,050 at the end of 2018, an increase of 40%, although there was a slight drop to 2,750 in 2019.<sup>5</sup> This increase is welcome, resulting in a greater number of prisoners benefiting from early release and a small decrease in prison numbers in the past year. However, a 35% rate of release is still low for an initiative that is expected to be a normal part of the sentence for all those eligible for HDC.

With chronic levels of overcrowding on the prison estate and a prison population expected to rise in the coming years, it is crucial that the prison service has effective measures in place to relieve both existing and future population pressures. The reduction in the prison population seen since the start of the Covid-19 pandemic is likely to reverse as lockdown measures are eased and courts begin to resume normal functioning. The current police, crime, sentencing and courts bill will increase the time spent in custody for serious offences and is likely to put additional pressure on the prison population in the medium to long term. Furthermore, the recruitment of 20,000 extra police officers is likely to result in a more immediate increase in prison numbers through a rise in arrests and convictions. The latest government prison population projections predict that numbers in custody will rise to 98,700 by September 2026.<sup>6</sup>

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> HM Prison & Probation Service (2018) PSI and PI 01/2018—Home detention curfew assessment process, London: HMPPS

<sup>5</sup> Table A3.5, Ministry of Justice (2020) Offender management statistics quarterly: October to December 2019, Prison Releases 2019, London: Ministry of Justice

<sup>6</sup> Ministry of Justice (2020) Prison Population Projections: 2020 to 2026, London: Ministry of Justice

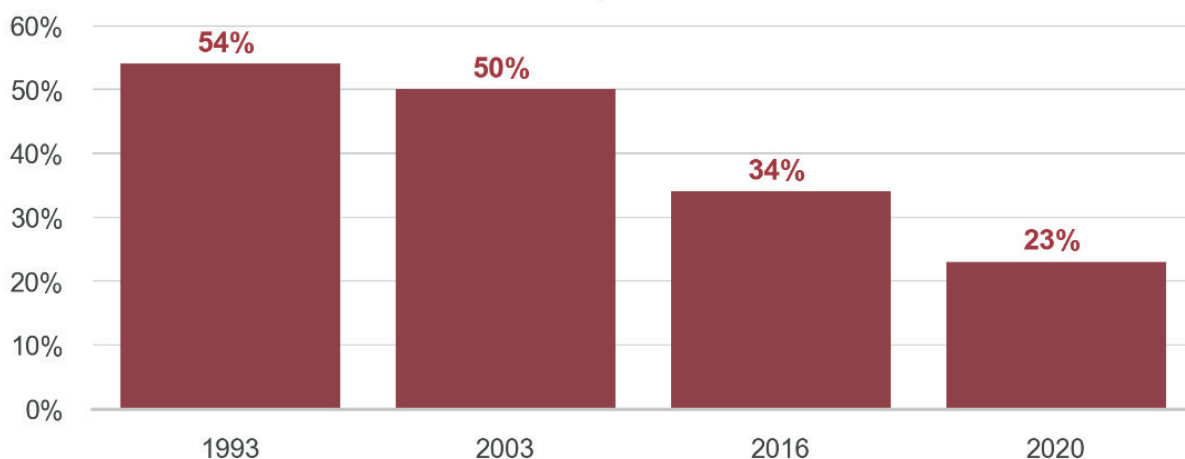
The low recall rates for HDC suggests that the scheme is relatively successful in meeting its primary aim of supporting a successful transition from custody to community with the use of tagging technology, as well as easing the pressure on overcrowded prisons. This briefing will examine arguments for changing the eligibility criteria for HDC to make its benefits available to a larger number of prisoners. It will also consider ways in which the purpose and efficiency of HDC could be further improved within the existing policy.

## Expanding the eligibility criteria for HDC

### Extend HDC to prisoners sentenced to over four years

When HDC was introduced in 1999 it was only available to people serving prison sentences of four years or less—a criteria which was fixed in the legislation and remains in place to this day (Annex 1 outlines the current eligibility criteria for the HDC scheme). However, the past two decades have seen a significant decrease in the proportion of the prison population serving sentences of four years or less. In June 1993, 54% of the sentenced prison population were serving sentences of less than four years. This proportion had dropped to 50% by June 2003, and as of June 2020 fewer than a quarter (23%) of sentenced prisoners were serving less than four years.<sup>7</sup>

Figure 2: The proportion of the prison population serving a sentence of less than four years



Source: Table A1.1, Offender Management Statistics, Prison population 2020 and The Story of the Prison Population 1993–2016

This Sentencing Council of England and Wales acknowledges the decline in the proportion of the prison population serving sentences of less than four years over the past 25 years:

*In recent years the population has broadly stabilised at current levels but with a shift in that, though fewer offenders are sentenced to immediate custody than before, they are sentenced for longer. Within the overall figures, the MoJ data show that the biggest shift has been from those serving sentences of four or more years: in 1993 over half of the ‘sentenced prison population’ were serving sentences of ‘less than four years’, whereas by 2016 this had reduced to about a third.<sup>8</sup>*

<sup>7</sup> Table A1.1, Ministry of Justice (2020) Offender management statistics quarterly: January to March 2020, Prison Population 2020, London: Ministry of Justice; and Ministry of Justice (2016) The Story of the Prison Population 1993–2016, London: Ministry of Justice

<sup>8</sup> Sentencing Council for England and Wales (2018) Written evidence to the Justice Committee inquiry Prison Population 2022: Planning for the future, House of Commons Justice Committee: London

The existing eligibility criteria of the HDC scheme have failed to keep up with the changing nature of the prison population. The length of prison sentences and the size of the prison population have grown in a way which the originators of the HDC scheme did not foresee. When the scheme was introduced in 1999 more than half of prisoners would have been eligible for the scheme. Today it is less than one quarter.

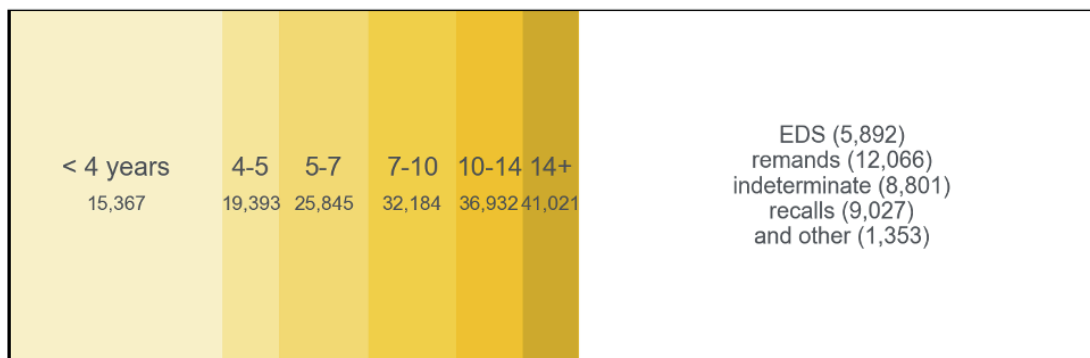
Expanding the criteria to people serving sentences of over four years would bring the scheme back into line with its original aims and purpose. Arguably, criteria based on sentence length should be done away with altogether and the scheme made available to the majority of prisoners serving fixed determinate sentences. Such a change would be controversial because it would include people convicted of some very serious offences. However, exclusion based on type of sentence is a poor substitute for individual risk assessment. First, it fails to take account of progress made by the individual in prison. Second, it fails to take account of the fact that reoffending rates for those on long determinate sentences are lower than for those on short sentences.

We provide an estimate below of the additional numbers of prisoners who could benefit from expanding the eligibility criteria to sentences of over four years. Our proposal does not include those serving indeterminate or extended sentences, or other sentences where release is at the discretion of the Parole Board.

### Additional numbers that could be freed as a result of extending criteria beyond four years

As of 31 December 2020, there are 15,367 people serving prison sentences of under four years. This represents just under a quarter (24%) of the sentenced prison population (65,171). If there were to be an extension of the current sentence length criteria to five years, the number of prisoners eligible for release would increase to 19,393 (30% of the total sentenced population).<sup>9</sup> If extended to sentences of up to seven, 10 or 14 years the figures would be 25,845 (40%), 32,184 (49%) and 36,932 (57%), respectively. Finally, if all people on determinate sentences were eligible for HDC, not including EDS or recalls, the number would rise to 41,021 (63%).<sup>10</sup>

Figure 3: Running total of the prison population by sentence length



Source: Table 1.1, Offender Management Statistics Quarterly: July to September 2020

<sup>9</sup> The estimates included in this section do not account for prisoners who would otherwise be excluded from the HDC scheme as a result of criteria separate to sentence length, such as offence type. These criteria are considered separately below.

<sup>10</sup> Table 1.1, Ministry of Justice (2021) Offender management statistics quarterly: July to September 2020, London: Ministry of Justice

It is hard to arrive at a precise estimate of the increase in the number of prisoners who might be released on HDC if the statutory criteria on sentence length were to be extended. This is because the data relating to the number of prisoners ineligible for HDC due to both statutory exclusions and administrative exclusions is not published. However, we can arrive at estimates by assuming the same release rates under the extended criteria as under the current upper limit of four years.

Thus with the same release rate of 35% we can obtain estimates for the number of people who could be released from prison for a range of upper limits. Were these changes to be made, the increase in the annual number of prisoners release would clearly be substantially lower than these figures, which represent the total number of releases that could be expected over time as prisoners in the newly eligible categories approached their automatic release date.

*Figure 4: Impact of increasing the eligibility limit on the HDC population*

Upper limit of eligibility	Estimated increase in HDC population
5 years	1,409
7 years	3,667
10 years	5,886
14 years	7,548
None (all determinate sentences)	8,979

### **The impact on recall and reoffending rates**

Inevitably, with the extension of the eligibility criteria, we would expect the number of people recalled back to custody whilst under the HDC scheme also to increase. In 2018 the recall rates were 7% for sentences between six and 12 months and 13% for sentences between 12 months and four years.

Based on the available data, it is not possible to make an accurate numerical projection of the increased number of people recalled in the case of raising the upper limit of eligibility. However, the relatively small increase in the rate of recall of 6% between sentences of up to 12 months and those up to four years suggests that lifting the upper limit would still see a large majority of prisoners serving the remainder of their sentence in the community and avoiding recall.

The Ministry of Justice does not publish figures for offences committed whilst on HDC. Between September 2019 and September 2020, 2,296 people were recalled back to custody whilst on the HDC Scheme. The Ministry of Justice places the reasoning for recall into three categories.

1. breach of curfew conditions;
2. Inability to monitor; and
3. breach of non-curfew conditions.

Of those, 1,230 people were for breach of curfew conditions; 548 people were classed as inability to monitor; and 551 people were for breach of non-curfew conditions.<sup>11</sup> Therefore over three-quarters of HDC recalls are recorded as having been justified by breach of curfew or an

<sup>11</sup> Table 3.4iii, Ministry of Justice (2021) Offender management statistics quarterly: July to September 2020, London: Ministry of Justice

inability to monitor.<sup>12</sup> These are both safeguards designed to allow recall to prison as a way of pre-empting any deterioration in a person's behaviour. Breach of non-curfew conditions – the third reason for breach – generally has the same intended effect. Therefore, from the available evidence, it is reasonable to assume that re-offending is not a factor in the majority of recalls. In addition, a previous study by the Ministry of Justice examining releases on HDC between January 2000 and March 2006 found that only 2% of the sample of around 63,000 were recalled for committing an additional crime.<sup>13</sup>

### **Extend the period an individual may spend on HDC in the community to 180 days**

Currently, the maximum period that an individual may spend in the community on HDC is 135 days. When the HDC provisions were commenced in 1999, the maximum HDC period was 60 days. This was increased to 90 days in 2002 and to 135 days in 2003.

In July 2019, the government introduced secondary legislation to increase the maximum length of the period which prisoners could spend on HDC in the community from 135 days to 180 days. In its impact assessment of the proposals, the government estimated that this would increase the number of people on HDC by around 500.<sup>14</sup>

The impact assessment identified a number of positive benefits of extending the HDC period. It stated that:

*Earlier resettlement will limit the harmful effects of custody and have a positive impact for offenders and their families; for example, earlier re-employment will allow them to support themselves and their families earlier in their sentence. Reducing the prison population will contribute to improving the conditions for both offenders and staff and enable prisoners to feel safer, calmer and readier to engage in their rehabilitation.<sup>15</sup>*

Despite the positive benefits identified in the impact assessment, in May 2020 the government chose to withdraw the legislation to extend the HDC period.<sup>16</sup> From media reporting at the time, it appears that the decision was driven not by evidence but political pressure from the government's own backbenches. From a policy perspective, it is hard to understand the rationale for the decision in view of the benefits of the proposal the government itself had identified. This is especially so given that the decision was made in the midst of the Covid-19 pandemic, when arrangements for ensuring the safe release of prisoners should have been given maximum priority.<sup>17</sup> We recommend that the government review this decision and legislate to reintroduce provision to extend the maximum length of the HDC period to 180 days.

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12 Recall reasons give the number of individuals within the three recall reasons groupings. As a recall might have more than one reason for being recalled, the total of recall reasons do not sum to the total number of recalls as more than one reason can be recorded against each recall.

13 [Marie, O., et al. \(2011\) The effect of early release of prisoners on Home Detention Curfew \(HDC\) on recidivism, London: Ministry of Justice](#)

14 [Ministry of Justice \(2019\) Extension of Home Detention Curfew period: Impact Assessment, The Criminal Justice Act 2003 \(Early Release on Licence\) Order 2019, London: Ministry of Justice](#)

15 Ibid.

16 Hymas, C. (2020) 'Ministry of Justice abandons "soft justice" plan to free prisoners early on tags', Daily Telegraph, available at <https://www.telegraph.co.uk/politics/2020/05/11/ministry-justice-abandons-soft-justice-plan-free-prisoners-early/>

17 HDC is separate from the End of Custody Temporary Release (ECTR) scheme introduced following the outbreak of the Covid-19 pandemic. However, there is some overlap between the cohorts of people in prison who are eligible for HDC and ECTR. For more information see [Ministry of Justice \(2020\) End of Custody Temporary Release, London: Ministry of Justice](#)

## **Review exclusions based on previous breaches and recalls**

The current HDC policy contains a number of statutory exclusions based on previous breaches or recalls. These include:

- Offenders serving a sentence for ROTL failure to return.
- Offenders serving a sentence for breach of the curfew requirement of a Community Order
- Offenders who have ever been recalled to prison for failing to comply with the HDC curfew conditions.
- Offenders who have ever been returned to custody by the court for committing an imprisonable offence during the at-risk period.
- Offenders currently serving a recall from early release on compassionate grounds.

In addition, anyone who has been recalled for poor behaviour whilst on HDC is presumed to be unsuitable for the scheme as an administrative measure. These exclusions remain in place regardless of how long ago the original incident occurred. Under the existing policy, the fact that circumstances and lives change, and people can and often do reform whilst in custody, cannot be taken into account. By contrast, in other areas of policy such as the 2019 ROTL policy framework, there has been a significant improvement in how previous breaches are considered. The new ROTL policy framework allows people with a prior abscond history (if it occurred more than two years ago and only once during the current sentence) to be risk assessed for open conditions and ROTL.<sup>18</sup>

We recommend changing the eligibility criteria for HDC so that exclusions become discretionary. This would allow the completion of offending behaviour work, improvements in behaviour whilst in custody and other examples of change in behaviour since the original incident which prompted the exclusion to be considered.

## **Review offence-based exclusions**

The existing HDC policy includes a number of statutory offence-based exclusions.

These include:

- people who are listed on the Violent and Sex Offender Register;
- people convicted of violent or sexual offences currently serving an extended sentence;
- offenders serving a sentence for ROTL failure to return; and
- offenders serving a sentence for breach of the curfew requirement of a community sentence.

In addition, the current policy includes a non-statutory presumption that anyone convicted of the following offences is unsuitable for the scheme:

- homicide;
- explosives;
- possession of an offensive weapon;
- possession of firearms with intent;
- cruelty to children;
- racially aggravated offences;
- terrorism; and
- anyone with a history of sexual offending but not required to register.

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<sup>18</sup> Ministry of Justice (2020) [Release on Temporary Licence \(ROTL\) Policy Framework](#), London: Ministry of Justice

Blanket policies of this kind are often part of the government’s “handling plan” for the introduction of politically controversial initiatives which concern sentencing. However, an individual’s offence history is an imperfect guide to determining their suitability for HDC, as it fails to take account of the dynamic nature of risk or a person’s capacity to change. Entitlement to HDC should be based on a rounded assessment of the individual and their circumstances, not just their previous offence history. We recommend that these statutory exclusions and non-statutory presumptions are revised so that a broader set of considerations can be taken into account in determining eligibility for HDC. We note that the majority of the existing offence-based presumptions could be removed without the need for any change to the existing statutory framework.

### **Remove presumption against HDC for foreign national prisoners**

Under the existing policy, foreign national prisoners who are liable to deportation but have not yet been served a decision to deport are presumed unsuitable for HDC. Foreign national prisoners may not have been convicted of an offence that would normally be deemed ineligible or unsuitable for HDC. Without a decision regarding their stay in the UK being finalised or deportation papers having been served, this policy is discriminatory and prevents a significant cohort of prisoners from having access to the same rehabilitation opportunities as others. If there is a concern that a person may abscond to avoid enforcement action, the answer is surely to resolve their immigration status before their HDC eligibility date, which is in the interests both of the individual and the efficient use of both prison and immigration resources.

## **Increasing the uptake of HDC**

### **Increase use of GPS electronic monitoring (EM) technology**

The recent piloting by the Ministry of Justice of GPS Electronic Monitoring (EM) technology shows the potential for it to be used to increase the uptake and expand the use of HDC. Existing curfew monitoring is limited to monitoring curfew conditions and not precise location. GPS monitoring enables offender managers to pinpoint a person’s location at any given time. It would allow offender managers to place restrictions in addition to the curfew - for instance, by creating an exclusion zone around a set geographical area.

In 2016, the government launched a pilot scheme into the use of GPS EM technology in two pilot areas. Pilot area 2 in Bedfordshire, Northampton, Cambridgeshire and Hertfordshire focused on the use of the technology in early release from prison, including for those eligible for HDC, those being considered for rerelease following a recall, offenders released on licence who may otherwise be recalled to prison, and certain parole cases.

The evaluation of the pilot found that partner agencies were enthusiastic about the prospect of using GPS location monitoring to help monitor and manage compliance with bail, sentence, and licence conditions. Key learning points included the importance of clear communication across and within partner agencies to enable a consistent approach to delivery, and the need for sufficient time and resources to develop the infrastructure to support the wider rollout of GPS location monitoring.<sup>19</sup>

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<sup>19</sup> Kerr, J., et al. (2019) Process evaluation of the Global Positioning System (GPS) Electronic Monitoring Pilot: Qualitative findings, London: Ministry of Justice

GPS Electronic Monitoring (EM) technology could allow governors and directors of prisons greater discretion in granting HDC to individuals who might otherwise be considered ineligible on risk grounds. If used appropriately, it could also be used to extend the use of HDC to people who may be currently presumed ineligible. The potential for GPS tagging to increase the uptake of HDC has already been recognised in prison service guidance. NOMS Electronic Monitoring Global Positioning System toolkit for partner agencies states that:

*In cases where the HDC board is minded recommending refusal on risk grounds, consideration should be given to whether the risks identified by the offender might be adequately managed via a GPS tag. The offender manager must be consulted in any case where the Board is minded to recommend use of the GPS tag.*

*Electronic location monitoring should not be used as an additional condition in cases where the offender would have been released on HDC anyway under a curfew monitored by EMS. The decision maker must be of the view that it is the additional GPS location monitoring capability that makes the difference between a refusal and a grant of HDC. For example, where there is a need for an exclusion zone, but the individual is assessed as unlikely to comply with that condition without electronic location monitoring.<sup>20</sup>*

GPS EM on average is 50% cheaper per day than keeping a person in prison. The upper bound estimate of cost per wearer per day during the period of the pilot was £56.<sup>21</sup> This contrasts with the average cost of housing a person in custody of £122 per day. Annually, the overall cost of imprisonment per person is now £44,640.<sup>22</sup> Over the same annual period GPS EM per person is on average £22,000.

### **Increase availability of suitable accommodation**

A person being considered for HDC is required to have suitable accommodation in place before they can be eligible for release. For those who are not able to make their own provision, or for those whose accommodation is deemed unsuitable, support is provided by the Bail and Accommodation Service (BASS). Set up in 2007, the scheme accommodates people on bail and on HDC. They are adults who need a suitable address, or some support, so that they can be released.

Ministry of Justice statistics show that 7,698 offenders released from custody in 2017–18 were released to bail/probation accommodation and 37,303 were released to settled accommodation. The remaining offenders were released to accommodation that is not suitable for HDC. Therefore, 17% of offenders released to accommodation suitable for HDC (settled or bail/probation accommodation) were released to bail/probation accommodation. This provides an indicative figure of 17% for the proportion of HDC releases who go to BASS accommodation.<sup>23</sup>

As part of its response to the Covid-19 pandemic, the Ministry of Justice secured £8.5 million to support individuals at risk of homelessness on their release from prison and help them to move on to permanent accommodation. The scheme initially ran between 18 May and 31 August 2020 and provided up to 56 nights' accommodation per individual. Following the introduction of national restrictions across England from 5 November and the Welsh government's introduction of a 'firebreak', the government reinstated this accommodation support. This started from 22 October 2020 and is subject to monthly reviews. As part of its initial response, The

<sup>20</sup> [NOMS \(2016\) Electronic Monitoring Global Positioning System Toolkit for partner agencies](#), London: NOMS

<sup>21</sup> *Ibid.*

<sup>22</sup> Table 1, Ministry of Justice (2020) Costs per prison place and cost per prisoner by individual prison establishment 2019 to 2020 tables, London: Ministry of Justice

<sup>23</sup> [Ministry of Justice \(2019\) Extension of Home Detention Curfew period: Impact Assessment, The Criminal Justice Act 2003 \(Early Release on Licence\) Order 2019](#), London: Ministry of Justice

Ministry of Justice, through Her Majesty's Prison and Probation Service (HMPPS), set up seven Homelessness Prevention Taskforces (HPTs) to work with local authorities and other partners to find accommodation for offenders released from prison; these taskforces continue to be active.<sup>24</sup>

Despite these initiatives, government figures show that of the 7,814 offenders released between 23 March–30 April 2020, 13% released were described as homeless.<sup>25</sup>

Government research published in December 2020 found that more than half (53%) of people who reported sleeping rough within the last year had previously spent time in prison.<sup>26</sup>

Her Majesty's Inspectorate of Prisons (HMIP) reports have previously identified a lack of suitable accommodation as a key factor behind the high rate of HDC refusal.

For instance, at HMP & YOI Foston Hall the inspection found:

*The number of prisoners released on home detention curfew (HDC), although higher than when we previously inspected, was lower than we normally see. In the previous six months, 42 applications were made for HDC. Twenty-five had been agreed and 17 had been declined. In the previous three months, no Bail Accommodation and Support Service placements were available in the local area. HDC decisions were appropriate, but too many prisoners did not have a suitable address and could not be released.*<sup>27</sup>

At HMP Brixton inspectors found:

*HDC applications were timely. Many were rejected because of a lack of suitable accommodation. Release on temporary licence had not been used at the prison since 2017.*

*In the six months before our inspection, 211 applications had been made for home detention curfew (HDC), 131 of which had been approved. However, 76 applications were rejected because there were problems finding a suitable address on release.*

*During our inspection, limited Bail Accommodation and Support Service (BASS) placements were available in London.*<sup>28</sup>

We recommend that BASS services are audited to check that they are operating effectively. If necessary, the government should be prepared to invest in expanding bed spaces in the BASS services to sufficient capacity for people on HDC. We also recommend that the government extends its emergency accommodation support package, as well as publishing statistics on its performance so its impact can be independently assessed.

## Improved equality monitoring

Examining how HDC policy impacts on different protected characteristics is important for assessing the overall fairness and effectiveness of the scheme. However, the existing data on the equality impact of HDC policy is limited. Data is available on ethnicity and gender but is not broken down for other protected characteristics.<sup>29</sup>

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<sup>24</sup> [House of Lords written question HL10209, 11 November 2020](#)

<sup>25</sup> [House of Commons written question 61689, 19 June 2020](#)

<sup>26</sup> Ministry of Housing, Communities & Local Government (2020) Rough sleeping questionnaire: initial findings, London: MHCLG

<sup>27</sup> [HM Inspectorate of Prisons \(2019\) Report on an unannounced inspection of HMP & YOI Foston Hall, London: HMIP](#)

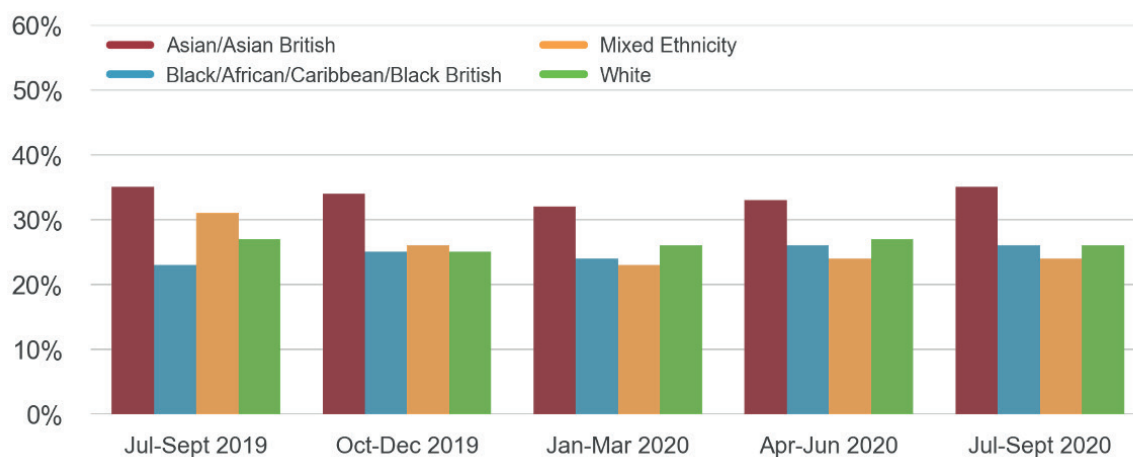
<sup>28</sup> [HM Inspectorate of Prisons \(2019\) Report on an unannounced inspection of HMP Brixton, London: HMIP](#)

<sup>29</sup> [House of Lords written question HL17031, 9 July 2019](#)

## Ethnicity

Between October 2019 to September 2020 Asian/Asian British prisoners had the highest rate of successful applications for HDC. 34% of all eligible prisoners from this group were granted HDC. By contrast, 26% of eligible white prisoner and 25% of eligible Black /African/Caribbean/Black British prisoners were granted HDC. Prisoners from the other ethnic group had the lowest rate of successful application with only 15% from this group granted HDC.

Figure 5: HDC releases by ethnicity, July 2019–September 2020



Source: Table 3.4ii, Ministry of Justice (2021) Offender Management Statistics Quarterly: June to September 2020

## Gender

For the year October 2019 to September 2020 there were 3,417 female prisoners eligible for HDC. 1,060 of those eligible were granted release on HDC. This accounts for 31% of all female prisoners who were eligible.<sup>30</sup> For the same year, 40,577 male prisoners were eligible for HDC of whom 10,424 were granted release. This represents a release rate for men of 26% —5 percentage points less than the equivalent rate for women.

We would expect the release rate to be higher in the case of women, as in general a smaller proportion of women compared to men are in prison for violent or sexual offences, and therefore they are less likely to fall in the statutory excluded categories. However, in the absence of data explicitly accounting for statutory exclusions, we are unable to reach definite conclusions from the available data.

Under the principle of “explain or reform”, differences in outcomes between minority ethnic groups merit further investigation, so that any disproportionate outcomes can be addressed. In addition, as part of its routine monitoring, we recommend that the government collects and publishes the appropriate data on acceptance and refusal rates for all groups with protected characteristics.

<sup>30</sup> Table 3.4i, Ministry of Justice (2021) Offender management statistics quarterly: July to September 2020, London: Ministry of Justice

## Conclusion

HDC is an effective tool for easing the transition from custody to the community as well as managing existing and future population pressures. However, as this briefing shows, its use is being hampered by restrictive eligibility criteria which unnecessarily exclude large categories of prisoners who could potentially benefit from the scheme. Even within existing criteria, uptake of HDC could be further improved through better use of technology, improved provision of accommodation and addressing disproportionate outcomes for different protected characteristics.

## Recommendations

Based on the findings of this briefing, government should:

1. Extend the eligibility criteria to prisoners sentenced to four years and above
2. Extend the period an individual may spend on HDC in the community to 180 days
3. Revise exclusions based on previous breaches and recalls in line with ROTL policy
4. Revise offence-based exclusions, particularly non-statutory presumptions
5. Remove the presumption against HDC being granted to foreign national prisoners
6. Support use of GPS technology to increase uptake of HDC, particular to prisoners deemed unsuitable
7. Ensure BASS services are audited to check that they are operating effectively. If necessary, the government should be prepared to invest in expanding bed spaces in the BASS services to provide sufficient capacity for people on HDC.
8. Extend the emergency accommodation support package, as well as publishing statistics on its performance so its impact can be independently assessed.
9. Under the principle of explain or reform, investigate disproportionate outcomes in release rates on HDC for different ethnic groups.
10. Collect and publish data on acceptance and refusal rates for all groups with protected characteristics.

## Annex 1

### HDC eligibility criteria

HDC is eligible to people serving custodial sentences between 12 weeks and four years. The maximum time someone can serve their sentence under HDC licence supervision is for 135 days.

In the current policy, to be successful in being granted HDC, prisoners must meet a specific eligibility criterion. There are two types of criteria expectations. The first is statutory eligibility criteria. If a prisoner falls into this category, they are automatically excluded from the HDC scheme. The second is presumed unsuitable, where a prisoner may be considered for HDC but only in the cases of extreme circumstances would they be deemed eligible.

#### Statutory eligibility criteria

The following are statutorily excluded from HDC.

- Anyone sentenced to four years or more for any offence.
- Sex offenders required to register.
- Offenders convicted of violent or sexual offences currently serving an extended sentence.
- Offenders serving a sentence for ROTL failure to return.
- Offenders serving a sentence for breach of the curfew requirement of a Community
- Foreign national prisoners (FNPs) who have been recommended for deportation by the court and those who are liable to deportation and a decision to deport has been served (i.e. not just those with a Deportation Order).
- Offenders with less than 14 days to CRD from date of sentence.
- Offenders who have ever been recalled to prison for failing to comply with the HDC curfew conditions.
- Offenders who have ever been returned to custody by the court for committing an imprisonable offence during the at-risk period.
- Offenders currently serving a recall from early release on compassionate grounds.

#### Presumed unsuitable

Anyone serving a sentence for any of the following categories of offence:

- homicide;
- explosives;
- possession of an offensive weapon;
- possession of firearms with intent;
- cruelty to children;
- racially aggravated offences; or
- terrorism.
- Anyone with a history of sexual offending but not required to register.
- Anyone who has been recalled for poor behaviour whilst on HDC.
- Foreign national prisoners liable to deportation but not yet served with a decision to deport.
- Offenders sentenced to four years or more imprisonment by an overseas court but who have less than four years to serve after repatriation to the UK.
- Category A offenders.<sup>31</sup>

The logo for Prison Reform Trust, featuring the words "PRISON REFORM TRUST" in white, uppercase, sans-serif font, stacked vertically on a dark red rectangular background.

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Prison Reform Trust  
15 Northburgh Street London EC1V 0JR  
020 7251 5070  
020 7251 5076  
[www.prisonreformtrust.org.uk](http://www.prisonreformtrust.org.uk)

### **About the Prison Reform Trust**

The Prison Reform Trust is an independent UK charity working to create a just, humane and effective prison system. For further information about the Prison Reform Trust, see [www.prisonreformtrust.org.uk/](http://www.prisonreformtrust.org.uk/)

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