

The Criminal Justice Act 2003 (Home Detention Curfew) Order 2023

Equality Statement

Purpose of this Document

1. This equality analysis has been undertaken to assist the Secretary of State in deciding whether to change the Home Detention Curfew (HDC) scheme as prescribed in the Criminal Justice Act 2003 (Home Detention Curfew) Order 2023 (the Order). It supports the Secretary of State in fulfilling his duty under the Public Sector Equality Duty (PSED) by having due regard to the equality impact of implementing the Order.
2. This document assesses the potential equalities benefits and risks that have been identified. It considers any necessary mitigating actions which have been proposed to reduce the likelihood of the risks and includes an assessment of any equalities benefits.

Policy Summary

3. The current maximum period that an offender may spend in the community on Home Detention Curfew (HDC) is 135 days (4 and a half months). The intention of this Order is to extend this period to a maximum of 180 days (6 months) to those already eligible for the scheme. Those who meet the criteria at the time of implementation will have the benefit of a longer period of transition from custody to supervision under licence in the community, while subject to strict monitoring conditions.
4. The Order does not extend the scheme to those currently ineligible, nor does it change the minimum period which must be served before being eligible for HDC.
5. The maximum period of HDC depends on sentence length and the effect of this order is to increase the maximum for those serving sentences of more than 18 months' imprisonment. It has no effect on those serving 18 months or less. The following table illustrates the maximum HDC period by sentence length, following implementation:

Sentence length ¹	Minimum custodial term	HDC period
12 weeks to 16 weeks	28 days	2 weeks to 4 weeks
16 weeks to 18 months	One quarter of sentence	4 weeks to 135 days
18 months to 2 years	One quarter of the sentence	135 days to 180 days
2 years to less than 4 years	180 days before sentence midpoint	180 days

The current HDC scheme

6. The Criminal Justice Act 2003 (the 2003 Act) requires that with some exceptions, prisoners serving standard determinate sentences must be released at the halfway point of the sentence. The 2003 Act also provides for an HDC scheme which allows for certain prisoners to be released up to 135 days before the halfway point. The scheme applies to those serving standard determinate sentences of at least 12 weeks but less than four years and they must serve at least a quarter of their sentence or 28 days in prison (whichever is greater).

¹ Approximate – rounded from days for clearer presentation.

7. Certain offenders are statutorily excluded from release under the scheme, including registered sex offenders and terrorist offenders. Others are, as a matter of policy, presumed unsuitable for the scheme in the absence of exceptional circumstance, including those convicted of sexual offences but not required to register. It is intended that specified offences often linked to domestic abuse will be added to the list of exclusions. Release is discretionary and the decision is taken by the prison governor on behalf of the Secretary of State. Offenders who have a suitable address and pass a risk assessment may be released subject to electronically monitored curfew for at least 9 hours per day. Since April 2019, electronic monitoring of the offender's whereabouts beyond the curfew address has also been available, where necessary and proportionate to manage that individual. Those released on HDC are also subject to probation supervision and licence conditions. Failure to comply with the licence conditions or with the HDC curfew requirements, or tampering with the monitoring equipment, can result in the offender being recalled to prison.
8. The purpose of the HDC scheme is to manage more effectively the transition of offenders from custody back into the community. The scheme enables prisoners to be released from prison early, while remaining subject to significant restrictions on their liberty.

Ministry of Justice and the Public Sector Equality Duty

9. Under the [Equality Act 2010² \(the 2010 Act\)](#), when exercising its functions, the MoJ has an ongoing legal duty (the public sector equality duty or PSED) to pay due regard to the need to:
 - eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct under the Equality Act 2010;
 - advance equality of opportunity between different groups of persons who share a protected characteristic and those who do not; and
 - foster good relations between different groups.
10. We also recognise that, as well as having an obligation not to directly or indirectly discriminate against disabled people, the MoJ as a service provider has a duty to make reasonable adjustments for disabled people.
11. The payment of due regard to the PSED needs to be considered in light of the nine protected characteristics:
 - Race
 - Sexual Orientation
 - Marriage/Civil Partnership
 - Gender
 - Religion or Belief
 - Gender Reassignment
 - Disability
 - Age
 - Pregnancy/Maternity

Sources of Information

² http://www.legislation.gov.uk/ukpga/2010/15/pdfs/ukpga_20100015_en.pdf

12. The main sources of information used for this analysis is the latest Ministry of Justice's *Offender Management statistics quarterly, England and Wales*³ and *Criminal Justice System statistics quarterly*⁴.

Unavailable data

13. Publicly available data about protected characteristics is unavailable for prisoners released on HDC with the exception of their sex, age, and ethnicity. While there may be other prisoners with protected characteristics eligible for release on HDC, their eligibility is determined by the length and type of their sentence according to the 2003 Act and the policy, and not with regard to their protected characteristic.

Scope of this analysis

14. This analysis focuses on the impact of the changes proposed in the statutory instrument. When it is implemented, it is intended that the list of offences excluded will be expanded too, to include specified offences often linked to domestic abuse. Equalities analysis of the impact of that change is being undertaken separately.

Affected Groups

15. The proposed change will have a direct impact on those offenders already eligible for the HDC scheme and who are serving sentences of more than 18 months and less than 4 years' imprisonment. It does not change the eligibility criteria or assessment process.

16. For this equalities analysis we are comparing the affected group, those eligible for HDC who are serving a sentence of more than 18 months and less than 4 years' imprisonment, with those who are eligible for HDC as a whole, namely those eligible for HDC who are serving a sentence of more than 12 weeks and less than 4 years' imprisonment.

17. Published data that would inform whether individuals among this group with certain protected characteristics will be disproportionately affected is limited. However, sentencing data provides information according to some characteristics: sex, ethnicity and age.

18. This data⁵ suggests that some characteristics may be overrepresented in the population affected by this policy (those eligible for HDC who are serving sentences over 18 months but under 4 years) compared to the HDC eligible population as a whole (those eligible serving more than 12 weeks and less than 4 years)⁶. Specifically:

- i. Younger people appear to be overrepresented; in the year ending June 2022, of the affected HDC group (18 months to 4 years), 44% were between the ages of 18-29. In contrast, of all of the total HDC eligible group (12 weeks to 4 years), 39% were 18-29 years old.

³ Offender Management Statistics quarterly: April to June 2022, accessed at

<https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-april-to-june-2022>

⁴ Criminal Justice System statistics quarterly: June 2022. <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-june-2022>

⁵ The source data is the 'Sentencing Outcomes' table in the 'Outcomes by Offence data tool: June 2022' workbook of the Criminal Justice System statistics quarterly: June 2022.

⁶ Custodial sentences of 'More than 2 months and under 3 months' have been excluded in calculating the total HDC eligible population due to how the data is split in the table, although offenders serving at least 12 weeks may be eligible for HDC.

- ii. Some ethnic groups also appear to be overrepresented; in the year ending June 2022, of the affected HDC group (18 months to 4 years), ethnicity was recorded as Black in 12% of sentences and Asian in 8% (where ethnicity was recorded), compared to 10% and 7% respectively for the total HDC eligible group (12 weeks to 4 years).
19. Sentencing data is only able to indicate imbalances within the group of those sentenced to custody and potentially eligible for HDC, and not according to actual releases on HDC. As such, this does not take account of any disproportionality in release rates. Data on prison releases is better able to indicate this.
20. Relevant data for prison releases⁷ on HDC is available for the protected characteristic of sex, though it is not broken down into the relevant 18 months to under 4 year sentence group. The available data relates to those sentenced to between 2 and 4 years (i.e., those who will be able to be released for the maximum period), which has been used as a proxy.
21. From this data⁸, in volume terms, males will disproportionately benefit since they are overrepresented in the 2-4 year subset of HDC releases., in the year ending June 2022, 92% of offenders serving sentences of 2-4 years who were released on HDC were male, whereas 90% of total HDC releases for the overall eligible HDC population (12 weeks to 4 years) were male.
22. A higher proportion of females than males are released in both HDC eligible groups albeit in much smaller numbers. In the year ending June 2022, 40% of eligible females among 2-4 year sentences were released compared with 29% of males, and 34% females among the overall eligible HDC population (12 weeks to 4 years) compared with 23% of males, so there will be no detrimental impact on the rates by which females are released from this policy change.
23. Although quarterly data on HDC releases by ethnicity has been published since July 2019, covering releases from January-March 2018, this is not broken down by sentence length.
24. By virtue of the overrepresentation of the groups noted above, we acknowledge that any positive impacts arising from the extension of the maximum period of HDC will benefit those groups of prisoners listed above relative to the HDC eligible population as a whole. We do not anticipate any adverse effects associated with this legislation, because it is not changing the eligibility criteria.

Eliminating Unlawful Discrimination

Direct Discrimination

25. Direct discrimination occurs when a policy would result in people being treated less favourably because of a protected characteristic. Our assessment is that this policy is not directly discriminatory within the meaning of the 2010 Act, as the changes from this policy apply in the same way to all prisoners eligible for HDC, regardless of their protected

⁷ Offender Management Statistics quarterly: April to June 2022:

<https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-april-to-june-2022>

⁸ The source data is table 3_4i in the 'Prison releases: April to June 2022' workbook of the Offender Management Statistics quarterly: April to June 2022.

characteristics. Whether or not the extension applies is not a matter of discretion, it is automatically added to the HDC eligibility period for those serving 18 months or more.

Indirect Discrimination

26. Indirect discrimination occurs when a policy applies equally to all individuals but would put those sharing a protected characteristic at a particular disadvantage compared to those who do not.
27. Our assessment is that extending the maximum period of HDC by up to 45 days for some prisoners does not cause particular disadvantage to any person due to their protected characteristics, subject to the over representation of certain protected characteristics as explained below. All eligible offenders serving the affected sentence lengths will benefit from an increased HDC eligibility period. If it could be shown that people with a certain protected characteristic were put at a particular disadvantage, we believe it is a proportionate means of achieving our legitimate aim.
28. As noted above, the available data suggests that some groups are overrepresented in the population impacted by the policy (those sentenced to between 18 months and under 4 years) compared to the HDC eligible population as a whole. We do not propose any mitigating action so that those serving shorter sentences also benefit from an extended period on HDC because that could only be achieved by requiring them to serve proportionately less time in custody than others, less than the minimum quarter of the sentence, and this would undermine public confidence in the administration of justice.
29. This proposal will in effect allow a more proportionate approach to the time served prior to release between those in the shorter sentence group and those in the 18 months to 4 year group.

Discrimination arising from disability and duty to make reasonable adjustments

30. In so far as this policy/legislation extends to prisoners with disability eligible for HDC, we believe that the policy is proportionate, having regard to its aim. It would not be reasonable to make an adjustment for all prisoners with disability eligible for HDC so that they are out of scope of the proposals, but it remains important to make reasonable adjustments for all prisoners with disability eligible for HDC to ensure appropriate support is given.

Advancing Equality of Opportunity

31. Consideration has been given to how these proposals impact on the duty to advance equality of opportunity by meeting the needs of prisoners eligible for HDC who share a protected characteristic, where those needs are different from the needs of those who do not share that protected characteristic.
32. This legislation will mean that some prisoners will be eligible for release on HDC up to 45 days earlier than currently, namely those sentenced to between 18 months and just below 4 years. Earlier resettlement will limit some of the harmful effects of custody which will have a positive impact for the affected offenders and their families; for example, the chance

of earlier re-employment which will help them support themselves and their families earlier in the sentence.

33. An additional positive impact, affecting offenders not benefiting from earlier release, will be a reduction in the prison population, thereby contributing to an improvement in the conditions and enabling prisoners to feel safer, calmer and more ready to engage in their rehabilitation.

Fostering Good Relations

34. Our assessment is that extending the maximum period of HDC is unlikely to impact on fostering good relations between groups with different protected characteristics.

Continuing Analysis

35. The equality duty is an ongoing duty, and we will continue to monitor and review these measures for any potential impacts on persons with protected characteristics to help ensure that access to justice is maintained. The impact of extending the maximum HDC period will be explored when the data on HDC release by protected characteristics is next reviewed.