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REPORT ON THE REVIEW OF THE ARRANGEMENTS FOR HOME DETENTION CURFEW WITHIN THE SCOTTISH PRISON SERVICE - PROGRESS REVIEW

MAY 2019

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Contents

Executive Summary by HM Chief Inspector of Prisons for Scotland 3

Our purpose 5

Authority 5

Background and context 6

Our findings 7

Overview of Home Detention Curfew 8

Update on the recommendations from the initial review 11

Annex A - Letter from the Cabinet Secretary for Justice requesting a review against the recommendations 21

Annex B - Status of HDC - 1 November 2018 to 29 March 2019 23

Annex C - Prescribed Standard Conditions 24

Annex D - Glossary of terms 26

Executive Summary by HM Chief Inspector of Prisons for Scotland

I would like to start by again offering my sincere condolences to the family of Craig McClelland, whose murder gave rise to the strategic review of the Home Detention Curfew (HDC) in the Scottish Prison Service (SPS) (2018 Review) and this subsequent progress review.

In June of 2018, James Wright was sentenced to life imprisonment for the murder of Craig McClelland, a crime committed while he was unlawfully at large (UAL) having breached his Home Detention Curfew.

On 7 June 2018, HMIPS was instructed in accordance with section 7(2)(d) of the Prisons (Scotland) Act 1989, to carry out an independent review of HDC including the following expectations:

- An independent assessment of the processes that the Scottish Prison Service operate when considering applications for Home Detention Curfew to provide assurance for Ministers, the Parliament and the public.
- Make recommendations for changes or improvements, if any shortcomings or inconsistencies exist; and identify any areas of best practice.
- Escalate any area of immediate concern to the Scottish Prison Service CEO.

The Cabinet Secretary wrote in similar terms to Her Majesty's Inspectorate of Constabulary in Scotland (HMICS) giving a direction under terms of section 74(1) of the Police and Fire Reform (Scotland) Act 2012 to carry out a strategic review in respect of Police Scotland's role in Home Detention Curfew.

On 25 October 2018, the Scottish Government published the HMIPS HDC[1] review, which contained 21 recommendations covering a range of suggestions for improvement across operational processes, strategic direction and national guidance.

Following publication of the report, HMIPS received a letter from the Cabinet Secretary for Justice, Humza Yousaf (**Annex A**) on 11 November 2018 requesting that HMIPS carry out a review of the progress that the SPS had made towards implementing the recommendations of the initial review, within six months of the initial review report publishing.

Additionally, the Cabinet Secretary for Justice wrote in similar terms to HMICS, to request that a six-month review be carried out on the recommendations HMICS made following their independent assessment of Police Scotland's response to a breach of HDC in October 2018.

The SPS and the Scottish Government have made good progress with the delivery of the 21 recommendations made by HMIPS, and it is clear from our fieldwork that both organisations treated the HDC recommendations as a priority.

HMIPS has determined that sixteen of our recommendations have been fully met and are considered closed. In the remaining five recommendations, we recognise that more time is needed to fully satisfy all the requirements of our recommendations. We note, however, that steady progress has been made on these recommendations over the last five months, and they are on track to be completed within a reasonable timeframe.

[1] The report on the review of the arrangements for HDC within the SPS.

The HMIPS independent findings and the status of each of the recommendations progress are summarised in this report. A comprehensive evidence submission was produced by the SPS in support of their progress until April 2019. This document can be sourced from the SPS.

The revised guidance introduced four key presumptions against granting HDC. Since then, the numbers granted HDC have significantly reduced, adding to the overcrowding pressures experienced by the SPS. It is important to place this in context. Since the introduction in 2006 of the HDC policy until the changes in the criteria in 2018, more than 20,000 prisoners had been released on HDC by the SPS. HDC was considered a potentially transformative tool that contributed to their reintegration. For most prisoners eligible for release under the policy, HDC was a routine progression through their sentence allowing testing in the community before sentence expiry.

In 2018 there were approximately 300 offenders living in the community on home detention curfew with a successful completion rate of around 80%. There are now less than 60.

The current model is likely to maintain the numbers on HDC at minimum levels. It may be appropriate for the HDC Guidance and Governance Group to continue their work and re-evaluate the revised HDC process and outcomes against the original intent, recognising that any process has to retain the concepts of robust risk assessment and assurance.

There would be merit in engaging with additional agencies that may have an interest in evaluating HDC and its potential benefits, such as the Judiciary and the Parole Board for Scotland. This may deliver a new and equally credible model that would allow the numbers released on HDC or electronic monitoring to increase.

I would like to record my thanks to all who contributed to the progress review, including the staff from Police Scotland, members of the short life working group and other stakeholders. I would particularly like to thank the SPS for their ongoing support and willingness to share information. The progress review was led by Calum McCarthy, Inspector, HMIPS and supported by colleagues in HMIPS, with the executive lead provided by myself as HM Chief Inspector of Prisons for Scotland.

Wendy Sinclair-Gieben
Her Majesty's Chief Inspector of Prisons for Scotland

Our purpose

The purpose of HMIPS is to inspect and monitor the conditions in prisons and the treatment of prisoners, and inspect court custody provision in Scotland, and to report publicly on our findings. The inspectorate is independent of the SPS, the Scottish Courts and Tribunals Service (SCTS) and the Scottish Government, allowing us to report our findings impartially. These reports contribute to the UK's response to its international obligations under the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

Authority

In accordance with section 7(2)(d) of the Prisons (Scotland) Act 1989, the Cabinet Secretary for Justice can instruct Her Majesty's Chief Inspector of Prisons for Scotland (HMCIP) "to investigate specific matters connected with prisons or prisoners which have been referred to the Chief inspector by the Scottish Minister".

Background and context

1. In accordance with section 7(2)(d) of the Prisons (Scotland) Act 1989, the then Cabinet Secretary for Justice, Michael Matheson MSP wrote to HMIPS on 07 June 2018 with an instruction to undertake an:

2. *"investigation to involve an independent assessment of the processes that the Scottish Prison Service operate when considering applications for Home Detention Curfew to provide assurance for Ministers, the Parliament and the public".*

3. This request was made following the sentencing of James William Wright for murder; an offence committed whilst 'Unlawfully at Large' (UAL) having breached his Home Detention Curfew (HDC) on 23 February 2017 and been recalled to custody on 24 February 2017.

4. The report on the review of the arrangements for HDC within the SPS[2] was published on 25 October 2018. The report contained 21 recommendations for the SPS and the Scottish Government, which were upheld by the Cabinet Secretary for Justice, Humza Yousaf and the Chief Executive of the SPS, Colin McConnell.

5. Following publication of the report, HMIPS received a letter from the Cabinet Secretary for Justice, Humza Yousaf (**Annex A**) on 11 November 2018 requesting that HMIPS carry out a review of the progress that the SPS had made towards implementing the recommendations of the initial review, within six months of the initial review report publishing.

6. Additionally, and in terms of section 74(1) of the Police and Fire Reform (Scotland) Act 2012. The Cabinet Secretary for Justice also wrote in similar terms to HMICS, to request that a six-month review be carried out on the recommendations HMICS made following their independent assessment of Police Scotland's response to a breach of HDC in October 2018.

7. This review of progress report, provides an in-depth understanding of the progress against the recommendations for the SPS on the HDC process for the period 1 November 2018 to 29 March 2019, for those prisoners who were:
    - Currently on HDC (62 prisoners by 29 March 2019);
    - had successfully completed their HDC;
    - were UAL; and
    - were UAL during this period but were released prior to the new guidelines coming into effect.

8. As indicated in **Annex B**, between 1 November 2018 and 29 March 2019:
    - 21 prisoners (released between 18 June - 1 November 2018) were UAL at the start of the period;
    - by the end of the period all of these prisoners had been returned to custody;
    - an additional 112 prisoners were released on HDC during this period under the new guidelines;
    - eight of the 112 breached their HDC condition and were deemed UAL; and
    - by the end of the period, one of the eight was still UAL.

9. Of the original 54 UALs identified by the SPS on 18 June 2018, four[3] had still to return to custody by the 1 November 2018. These four individuals did not form part of this report. The SPS and Police Scotland had worked diligently to bring those still UAL either back into custody or remove them from the UAL list.

[2] HMPIS, report on the review of the arrangements for home detention curfew within the Scottish Prison Service, October 2018.
[3] As of 30 May 2019 this figure is now three.

Our findings

10. It was evident that the SPS, the Scottish Government and Police Scotland had responded positively to the recommendations made in the review published in October 2018. HMIPS appreciate that a significant effort has been made to meet the recommendations made by HMIPS and HMICS in a timely manner.

11. A Strategic Oversight Group (SOG) was created, and subgroups were given responsibility for developing the policy to meet the recommendations. HMIPS and HMICS attended the SOG meetings.

12. An updated version of the Guidance for Agencies was produced in October 2018, and there is now a greater degree of guidance and information to assist the decision making process. Four presumptions against release, in addition to the statutory exclusions, were also added. Changes to the HDC forms were made to reflect the new guidance expectations.

13. Greater links have been implemented between the SPS and Police Scotland in information sharing, to improve the risk management process of those applying for HDC.

14. There is no doubt that the introduction of the new presumptions has had a major effect on the numbers of prisoners being granted HDC. During the early part of 2018, an average of 27 people were released on HDC each week. Following the initial review and the introduction of the presumptions against HDC on October 2018, the weekly release of prisoners is now in single figures. On 26 March 2018, 278 prisoners were out on HDC compared with 67 on 26 March 2019, and given the new presumptions remain, the numbers are likely to reduce further.

15. From the files sampled during this review, 36% of those who would have previously been eligible for HDC were refused, based on the new presumptions. However, nspectors found that Governors in Charge (GICs) still considered individual cases despite the level of presumption. An example of this was a first time offender who was identified as having a low-level connection to serious organised crime groups (SOCG). He had a wife and two children, with an expected third child. Clarification was sought on the seriousness of the link to an SOCG, and this was balanced against him being a first offender with positive comments in the Community Access Report (CAR) and the Criminal Justice Social Work (CJSW) report. The prisoner completed his HDC without any issues.

16. HMIPS were advised that there may be a ‘risk averse‘ approach to assessing those eligible for HDC that contributed to the low numbers being released on HDC. In comparison we compared the allocations to HMP Castle Huntly, the Open Estate. It was noted that when comparing the number of prisoners who were located in HMP Castle Huntly over the same timeframe there was no significant drop in numbers. There were 200 in 2018 and 191 in March 2019. HMIPS found no evidence to support a risk averse approach.

17. HMIPS believes that for HDC to be successful it requires continued strong collaboration and communication between the SPS, local authorities, Police Scotland and the electronic monitoring (EM) service provider. It was clear from our fieldwork that the information flows between the SPS and their external partners had greatly improved. Communication protocols between the SPS and Police Scotland are now embedded, and Inspectors noted that information received from CJSW, as part of the CAR, was consistently more comprehensive.

18. The final decision on the release of a person on HDC is currently the authority of the GIC of the relevant establishment, or the Directorate Divisional Head for private prisons at SPS HQ. It is HMIPS view that the final decision could lie with the deputy governor, or the person who currently chairs the Risk Management Team meeting. This would ensure that a secondary assurance process would be possible with the GIC freed to quality assure the decision making process, hear all appeals and carry out sampling of all HDC applications whether accepted or refused.

19. Currently, those granted HDC on short-term prison sentences do not undergo an SPS risk assessment comparable to those with long-term sentences. In addition, short sentence prisoners granted HDC do not benefit from SPS through care support and the accompanying reintegration planning.

Overview of Home Detention Curfew

20. The Prisoners and Criminal Proceedings (Scotland) Act 1993[4] (as amended by the Management of Offenders etc. (Scotland) Act 2005[5] provides the power to release prisoners on HDC in Scotland.

21. The two Acts enable the SPS, on behalf of the Scottish Ministers, to release certain prisoners early on HDC licence. On 3 July 2006, the provisions came into force for short-term prisoners (those sentenced to less than four years).

22. In 2008, HDC was extended to certain prisoners serving long-term determinate sentences (those sentenced to over four years). The Parole Board for Scotland must firstly recommend release on parole at the parole qualifying date (after serving one-half of the sentence), before the SPS can make the decision to release a long-term prisoner on HDC.

23. In all cases, a mandatory HDC assessment is carried out before a final decision on HDC eligibility is made by the GIC.

24. The decision to release any prisoner on HDC must take into account the following considerations:

    - Protecting the public at large;
    - preventing reoffending by the offender; and
    - securing the successful re-integration of the prisoner into the community.

25. A number of statutory exclusions exist, which would preclude an individual from being considered for HDC by legislation. Prisoners who:

    - Are required to register as sex offenders;
    - are subject to an extended sentence;
    - are subject to a supervised release order;
    - are subject to a hospital direction; and
    - are awaiting deportation.

26. In October 2018, following our initial review, additional presumptions against HDC eligibility on index offences were introduced into the HDC eligibility assessment process for those:

    - Whose index offence involved an act of violence;
    - whose index offence involved the possession or use of an offensive weapon;
    - whose index offence involved the possession or use of an article which has a blade or a sharp point, and
    - who had known links to serious organised crime.

27. The maximum duration for HDC is 180 days (increased from 135 days on 21 March 2008); the minimum period remains 14 days.

[4] Legislation, Prisoners and Criminal Proceedings (Scotland) Act 1993.
[5] Legislation, Management of Offenders etc. (Scotland) Act 2005.

28. Consideration for HDC can only occur once the prisoner has served, whichever is the greater of:

    - One-quarter of their sentence; or
    - four weeks of their sentence.

29. All prisoners granted HDC are on licence subject to prescribed standard conditions (see Annex C) and a curfew. The prescribed standard conditions have been specified by order and differ for long-term and short-term prisoners. In certain circumstance, such as to accommodate an individual's working hours, the standard conditions e.g. hours of curfew, can be altered.

30. Responsibility for monitoring compliance with the curfew condition of the licence lies with the EM service provider, currently G4S, contracted to the Scottish Government to provide this service in Scotland.

31. Once the decision had been made to release an individual on HDC, the establishment notify the EM service provider, the local authority and Police Scotland.

32. Legislation also provides for those prisoners recalled to custody, for failing to comply with any condition included in the licence, to make representations against the revocation of their HDC licence to the Parole Board for Scotland.

33. If a prisoner fails to comply with any condition in their licence, the SPS may revoke it and recall the prisoner back to custody. In such cases, Police Scotland are responsible for apprehending the prisoner and returning them to custody.

Review methodology

34. HMIPS inspectors undertook:

- Six site visits;
- reviews of local paperwork and processes for compliance against legislation and the published Guidance for Agencies document (Justice Directorate Guidance document updated in October 2018, following the HMIPS review); and
- interviews with the GIC, HDC Unit Managers and HDC coordinators

35. Samples of the following files were reviewed. Those:

- Currently out on HDC who were released after 1 November 2018;
- who had successfully completed HDC who had been released after 1 November 2018;
- who were UAL that had been released after 1 November 2018; and
- that were released on HDC prior to 1 November 2018 (Guidelines from April 2018) who then became UAL after 1 November 2018.

36. HMIPS inspectors reviewed the following documents:

- The revised Guidance for Agencies document (31 October 2018);
- the new documentation on the SPS Prisoner Records System (PR2) produced following the initial review; and
- all Governors and Managers Actions and notices pertinent to HDC.

37. HMIPS and HMICS inspectors jointly attended Fettes Police Station to validate the communications flow between the SPS and Police Scotland.

Update on the recommendations from the initial review

Recommendation	Status: •Open/ •Partially met/ •Closed	Progress update	Outcome
Recommendation 1 Where a prisoner is being considered for community access through the transfer to open conditions, there is a requirement for a multi-disciplinary risk management team (RMT) to meet and assess the presenting risks. The assessment for a prisoner to be granted access to the community on HDC is undertaken by a single individual with potentially less information available to inform their decision than an RMT. There is a view that the RMT approach provides a more robust and considered assessment. The assessment process should therefore be reviewed to ensure that it can satisfy the assertion within the guidance that: *"… a robust assessment process has been developed …"* However, it must be recognised that the SPS is not currently funded or staffed to undertake a more detailed multi-disciplinary approach to HDC risk assessment, and as such the financial and resource implications would need to be addressed and appropriate funding provided if such an approach were to be adopted.	Closed	The SPS guidance now requires the Governor in Charge (GIC), or Operations Directorate Divisional Head for private prisons at SPS HQ, to approve any proposed release on HDC, giving a greater level of robustness, senior management oversight and risk assessment experience into the process. Inspectors noted that HDC releases were signed off by the GIC. The SPS decision to allocate this level of seniority is accepted by HMIPS as meeting the recommendation.	**HMIPS is satisfied that this recommendation has been fully met and is suitable for closure.** However, HMIPS note that this could also be completed by the Deputy Governor, thus freeing up the GIC to undertake a further local assurance process.
Recommendation 2 The guidance document requires extensive review in order to provide those charged with undertaking the assessment to release prisoners on HDC with more assistance in relation to the potential weight and importance that should be placed on previous offences, addictions issues and behaviour whilst	Closed	The updated Guidance for Agencies document made a number of changes to reflect the recommendations made in our 2018 report. The changes include additional information on index offences and presumptions against release. The fieldwork carried out by inspectors evidenced a more consistent approach to the HDC process,	**HMIPS is satisfied that this recommendation has been fully met and is suitable for closure.**

Recommendation	Status: •Open/ •Partially met/ •Closed	Progress update	Outcome
in custody etc. This would also provide a greater degree of consistency.		with regards to the weight placed on previous offences, addictions issues and behaviour whilst in custody.	
Recommendation 3 Specific training in risk evaluation and assessment must be provided to individuals or teams tasked with making the decision to release someone on HDC.	Partially met	The majority of the HDC Managers interviewed during our fieldwork reported that they had not received any formal training on risk management. They did however have extensive knowledge and experience in HDC as well as experience in the RMT process. The SPS are now delivering learning sets to those involved in the HDC process.	**HMIPS is satisfied that this recommendation has been partially met.** To be fully met, HMIPS would expect the learning set to be expanded to specifically include risk evaluation and assessment.
Recommendation 4 The value of utilising an individual's PSS level as part of the HDC process must be reviewed. PSS predominantly relates to behaviour whilst in custody and does not provide a valuable insight into the likelihood of reoffending, or the risk they pose to themselves or others when in the community.	Partially met	Inspectors note that the whole HDC assessment is considerably more detailed, thorough and robust, taking account of information from CJSW, Police Scotland as well as the PSS. However, we note that the PSS form has not changed since the review published in October 2018. PSS is designed to assist the SPS in making effective decisions in the management of prisoners, and indicates within the process that '*A prisoner whose activities and movements are subject to minimum supervision and restrictions and who may be given the opportunity to participate in supervised or unsupervised activities within the community*'. Gaining a low supervision level in the PSS process is part of the eligibility criteria for release on HDC, and not in itself a deciding risk factor. A more comprehensive risk assessment tool is not available for short-term prisoners.	**HMIPS is satisfied that this recommendation has been partially met.** To be fully met, HMIPS would expect the learning set to be expanded to specifically include risk evaluation and assessment

Recommendation	Status: •Open/ •Partially met/ •Closed	Progress update	Outcome
Recommendation 5 Given that additional HDC licence conditions were not monitored, it is doubtful that they serve any purpose. If it is decided that additional conditions are required to address a specific concern or identified risk, then serious consideration should be given to not granting HDC.	Closed	The Guidance issued in October 2018 by the SPS was strengthened to highlight the importance of being able to monitor additional licence conditions. During our fieldwork, the majority of CAR applications did not highlight additional conditions to be met prior to HDC release. Where extra monitoring was required to assist in reintegrating the person back into the community, plans were in place to allow these extra monitoring conditions to be met.	**HMIPS is satisfied that this recommendation has been fully met and is suitable for closure.**
Recommendation 6 The person charged with making the decision to release someone on HDC should have ready access to information and intelligence held by Police Scotland, the SCTS and the Crown Office and Procurator Fiscal Service (COPFS), before making the decision to release someone on HDC.	Closed	Significant work was carried out collaboratively between the SPS and Police Scotland to put in place an information sharing protocol. This includes information on potential links to SOCGs. Information is shared with Prison Intelligence Management Units (IMUs). This information is now given directly to the decision makers. The fieldwork carried out also evidenced the inclusion of CJSW reports and Trial Judge reports in the HDC files. It should also be noted that the information returned on CARs from CJSW had improved greatly. All HDC administrators now have access to SCTS Criminal Information Portal to allow checks of outstanding matters and, where necessary, they can contact COPFS via their enquiry email address.	**HMIPS is satisfied that this recommendation has been fully met and is suitable for closure.**
Recommendation 7 All local authority reports on the intended home address should be standardised to be of sufficient quality to allow an informed decision to be made. Additionally, reports should be completed by appropriately qualified staff. Form HDC 4 must,	Partially met	While completing our fieldwork the standard of the CAR and the information contained within it had improved substantially. From reading the forms, it was clear that the person had visited the property and spoken to the householder. Information contained	**HMIPS is satisfied that this recommendation has been partially met.** What constitutes a 'qualified person' must be ratified by Social Work

Recommendation	Status: •Open/ •Partially met/ •Closed	Progress update	Outcome
as an absolute minimum, be fully completed and signed, with the qualification of the report writer clearly annotated.		within the CAR allowed the SPS to make a more informed decision, particularly where the author of the CAR annotated issues that would not make the property suitable. All CARs were completed on the standardised HDC 4. The CAR forms were completed by various roles within Social Work Scotland, including Senior Social Workers, Bail Officers and Justice Support Assistants. As yet, there is not an agreed standard of qualification to allow someone to sign off a CAR. The SPS have advised that a new revised CAR has been accepted in principle by Social Work Scotland but still needs to be ratified.	Scotland and the SPS, and the Guidance updated to reflect this. What constitutes a qualified person should also be clarified in the Guidance when requesting a CAR outwith Scotland.
Recommendation 8 All intended home addresses must be visited. Where a visit is not possible the reasons should be clearly noted and HDC approval withheld until a visit can be undertaken.	Partially met	During this review, it appeared that all properties had been visited. In a number of cases, there was evidence that due to being unable to access the property the HDC was put on hold or refused. In some cases, Social Work Scotland had carried out as many as three visits to different households before agreeing that a property was suitable. Although the recommendation clearly states all intended home addresses must be visited for HDC, HMIPS recognised that the HDC process must be compliant with other legislation, such as when covering access to services for remote Highland and Island communities. We accept that a visit may not be achievable in all circumstances, and that a clear explanation of approach in the CAR to determine suitability must be made.	**HMIPS is satisfied that this recommendation has been partially met.** Until the Guidance for Agencies document has been updated to include an agreed rationale for allowing an HDC release where the property has not been visited is included, the recommendation will remain partially met.

Recommendation	Status: •Open/ •Partially met/ •Closed	Progress update	Outcome
Recommendation 9 A full set of standardised paperwork and clear filing and retention instructions should be developed by SPS Headquarters. Developed good practice observed in the field should be adopted where appropriate.	Closed	All HDC forms are now generated via the PR2 system, which ensures that all establishments are using the correct forms. This was evident during this review and was in line with the new guidance. The SPS also issued guidance through their Governors and Managers Action notices (GMA 007A/19) which informs administrators how to handle the retention of HDC documents, including those that are currently UAL. When asked, all HDC coordinators were able to explain the retention process. Future HDC learning sets will include the sharing of good practice as well as SPS HQ circulating any good practice identified from the centre. See also recommendation 15.	**HMIPS is satisfied that this recommendation has been fully met and is suitable for closure.**
Recommendation 10 A single point of contact for notifying Police Scotland of intended releases and recalls must be established.	Closed	HMIPS and HMICS attended Fettes Police Scotland on 1 April 2019 where the single point of contact between the SPS and Police Scotland was tested. All HDCs currently in the community, as well as those UAL since 1 November 2018 were checked, and there was 100% compliance with the process. Fieldwork identified that unless a HDC coordinator requested a read receipt for releases on HDC, there was no confirmation that Police Scotland had received the email.	**HMIPS is satisfied that this recommendation has been fully met and is suitable for closure.**
Recommendation 11 Serious consideration should be given to temporarily suspending HDC releases out with Scotland until a more rigorous communication protocol is developed between the SPS, Police Scotland and the English authorities in relation to the monitoring and licence revocation process.	Closed	During the review, only one person was released on HDC to an English address. The process followed was similar to that for release in Scotland. This case identified some difficulties in gaining the right Social Work team to carry out the CAR. However, the return report had the appropriate	**HMIPS is satisfied that this recommendation has been fully met and is suitable for closure.**

Recommendation	Status: •Open/ •Partially met/ •Closed	Progress update	Outcome
		information to inform the HDC decision makers. Since the introduction of the revised HDC process, there had been no HDC recalls from an English address to allow testing of the process. HMIPS are confident that as the process is the same as in Scotland, which has been proven robust, this recommendation can be closed.	
Recommendation 12 All prisoners being considered for HDC should be required to provide a contact number, ideally a mobile telephone number, before being released. If a contact number is not available, release on HDC should not be approved until one is provided.	Closed	The new guidance was amended by the SPS to ensure a valid contact number is provided. This is now annotated on HDC form 1. This was evidenced in all our document reviews where there was 100% compliance.	**HMIPS is satisfied that this recommendation has been fully met and is suitable for closure.**
Recommendation 13 The SPS should formally write to all individuals who breach HDC and are recalled to custody, clearly detailing the rationale for their decision.	Closed	The new guidance was amended by the SPS to ensure a letter is sent to the HDC address, advising the person that they have been recalled to custody, the reason why and the steps they should take. On review, for some UALs, the reason they had breached their HDC was due to the address no longer being suitable to the person, and so the likelihood of them receiving the letter would be minimal. In some cases those UAL returned to the prison before the letter could be sent out and would be given a recall notice HDC 15. Of the recalls reviewed, there was 100% compliance against the new guidance.	**HMIPS is satisfied that this recommendation has been fully met and is suitable for closure.**

Recommendation	Status: •Open/ •Partially met/ •Closed	Progress update	Outcome
Recommendation 14 The SPS Headquarters HDC team should take on a dual role of providing a governance and assurance structure and approach for HDC, as well as taking responsibility for the sharing, implementation and monitoring of good practice.	Closed	Establishments provide an annual statement of assurance to the Director of Operations and complete an annual self-audit via the Prison Resource Library (PRL) standards system, which has been updated to reflect the changes to the HDC process in the new guidance. The SPS Internal Audit and Assurance Team also test the results of PRLs by carrying out annual audit on all establishments on the process of HDC, which includes the decision making part. The Audit team have produced an annual audit plan for HDC. This was being undertaken while the HMIPS fieldwork was underway. The Operations Directorate (OD) Planning team at SPS HQ will undertake annual site support visits to all public sector prisons. The team had completed this by the time of this review. These site visits look to review the processes and decision making, and identify areas for development and good practice (see also Recommendation 9). A common themes report will be produced and shared with all involved in HDC.	**HMIPS is satisfied that this recommendation has been fully met and is suitable for closure.**
Recommendation 15 The SPS document retention guidelines should be reviewed to ensure that any live UAL files are clearly identified for retention until the individual is returned to custody, and all related matters are dealt with.	Closed	As noted in Recommendation 9, the SPS issued GMA 007A /19 outlining how administrators should handle the retention of HDC documents, including those that are currently UAL. When asked, all HDC coordinators could clearly express their understanding of the retention policy.	**HMIPS is satisfied that this recommendation has been fully met and is suitable for closure.**
Recommendation 16 The SPS should develop an agreement on regular and ongoing contact with the Police until an	Closed	There was good evidence during this review that the SPS and Police Scotland had a process in place where they maintained weekly contact at tactical level. Part of this	**HMIPS is satisfied that this recommendation has been fully met and is suitable for closure.**

Recommendation	Status: •Open/ •Partially met/ •Closed	Progress update	Outcome
individual UAL has been apprehended and returned to custody.		information flow is to reconcile information on those that are still UAL. However, there was evidence that, where it was deemed appropriate, contact was made out with the agreed weekly time. For example where persons either were arrested or handed themselves into an SPS establishment and therefore were no longer UAL, the other party were contacted. There was also good evidence at a local level that HDC Coordinators would contact Police Scotland for an update on any UALs they had.	
Recommendation 17 The SPS must ensure that information provided to external parties is checked and assured for accuracy prior to publication, as the information initially provided was inaccurate due to data amendments having not been expeditiously undertaken when required.	Closed	The initial review identified information inaccuracies in the reporting systems within the SPS, with regards to identifying HDC UALs. The SPS have worked hard to ensure that the information contained on PR2 is accurate.	**HMIPS is satisfied that this recommendation has been fully met and is suitable for closure.**
Recommendation 18 The guidance document should more accurately state that only low supervision prisoners should be released, as the current terminology has the potential to confuse supervision requirements in custody with risk to the community. The HDC assessment should more clearly define and emphasise that it is the risk to the community that is the primary risk being considered.	Closed	This recommendation is linked to Recommendation 4. A low supervision level in the PSS process is part of the eligibility criteria for release on HDC, and not a deciding risk factor. It does not investigate risk factors that may inhibit release on HDC.	**HMIPS is satisfied that this recommendation has been fully met and is suitable for closure.**
Recommendation 19 Justice Analytical Services (JAS) should record and report annually on reconviction rates for those released under HDC in their reporting of reconviction rates.	Partially met	JAS met with HMCIP to discuss this recommendation and responded at the meeting on 30 April 2019. JAS currently use data derived from Police Scotland's Criminal History System (CHS) in order to determine reconviction rates among a range of different cohorts. Due to the way the information is	**HMIPS is satisfied that this recommendation has been partially met.** Following discussions, JAS has agreed to work with partners, including the SPS, to discuss how

Recommendation	Status: •Open/ •Partially met/ •Closed	Progress update	Outcome
		held, it would be a prohibitively resource intensive and an expensive exercise to identify and extract this information, as it would involve people having to read each custodial record on CHS. JAS considered *'Justice Analytical Services currently use data derived from Police Scotland's CHS in order to determine reconviction rates among a range of different cohorts. Information related to HDC on the CHS is currently held in a free text box against each record, along with other parole and release information which is used for operational purposes. As the data is held in this format, it would be a prohibitively resource intensive and expensive exercise to identify and extract this information, as that would involve people having to read each custodial record on the CHS.* *Moreover, using reconviction rates would have limited value in allowing for comparisons between those that get, and those that do not get HDC. The selection procedures for HDC means that the two groups are likely to have different characteristics and different propensities to reoffend. Therefore, any differences could not be definitively attributed to the effect of HDC.'*	information on the outcomes of HDC, including rates of and reasons for recall (such as recall due to a further offence being committed) can be produced. Data collection and analysis will be developed in a way which is not overly resource intensive, and allows for informed conclusions to be drawn regarding future improvements that can be made to HDC processes.
Recommendation 20 The hierarchy of responsibility for HDC decisions should be urgently reviewed and a second level of assurance, on the recommendation to release an individual, should be allocated to a more senior manager.	Closed	Following the review published in October 2018, the Chief Executive of the SPS, Colin McConnell announced that GICs would have the ultimate say in whether someone would be released on HDC, via a Governors and Managers Action Notice 065/18.	**HMIPS is satisfied that this recommendation has been fully met and is suitable for closure.** Although the sentiments of the recommendation have been met, we recommend that the level of sign off

Recommendation	Status: •Open/ •Partially met/ •Closed	Progress update	Outcome
			could be reduced to the deputy governor or senior manager (in SPS HQ) above the level of the HDC manager.
Recommendation 21 Finally and most importantly, independent research should be undertaken to evaluate the success or otherwise of HDC in improving successful reintegration of prisoners back into the community. There is a wide variety of anecdotal evidence from prison staff and prisoners themselves that HDC is a valuable addition to the options available within the criminal justice system. However, there is little academic or other research in this area.	Closed	JAS have undertaken and published a literature review on 17 April 2019[6]. This review looked at the evidence available on the impact of HDC, and on wider electronic monitoring. This work examines the evidence for HDC on integration back into communities. However, the report identifies a problem in comparing different cohorts to examine the benefits of being released into the community on HDC, where there is successful re-integration. The research published covered the wider use of electronic monitoring where conditions of release i.e. more flexible curfew arrangements, eligibility regarding risk were different.	**HMIPS is satisfied that this recommendation has been fully met and is suitable for closure.**

[6] Scottish Government, Electronic monitoring: uses, challenges and successes, April 2019.

Annex A - Letter from the Cabinet Secretary for Justice requesting a review against the recommendations

Cabinet Secretary for Justice
Humza Yousaf MSP

Scottish Government
Riaghaltas na h-Alba
gov.scot

T: 0300 244 4000
E: scottish.ministers@gov.scot

Wendy Sinclair-Gieben
Chief Inspector of Prisons for Scotland

Our ref:

11 November 2018

Dear Wendy,

Review of the Arrangements for Home Detention Curfew

I wanted to pass on my appreciation to you and your team for undertaking such a thorough and careful review into the arrangements for Home Detention Curfew (HDC) and for working so closely with HM Chief Inspector of Constabulary for Scotland and the Scottish Prison Service.

HDC is an important mechanism for preparing prisoners for release. It is essential that it is robust and I believe the clear recommendations set out in your report will help to strengthen HDC processes and will ensure the principles of protecting public safety, preventing reoffending and securing successful reintegration are supported.

As you know, the Chief Executive of the Prison Service and the Chief Constable of Police Scotland have given me assurances that, in addition to actions already taken, work to implement the recommendations from your report and those set out by HMICS will be taken forward as a matter of priority. I would, however, welcome your continued oversight and I would therefore like HMIPS in partnership with HMICS to review progress against the 37 recommendations in 6 months' time.

I am keen to ensure that there is a clear action plan in place to evidence the progress around these recommendations. The Strategic Oversight Group has been charged with this but having your ongoing engagement will provide further assurance.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

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INVESTOR IN PEOPLE
POSITIVE ABOUT DISABLED PEOPLE

Going forward, it is vital that we have appropriate governance for monitoring and managing HDC, which some of the recommendations will address. I am also aware that there are recommendations directed at the Scottish Government and I will discuss implementation with key partners.

I have given a commitment to both Craig McClelland's family and Parliament to keep them sighted on progress. I am grateful for your on-going assistance and I look forward to receiving a report in May 2019 demonstrating what progress has been made.

Best Wishes,
H. Yousaf

HUMZA YOUSAF

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Annex B - Status of HDC - 1 November 2018 to 29 March 2019

Status within this period	No's
Number applied for HDC	1996
Number released on HDC	112
Including 1 to an address in England	
Number refused HDC	1884
Number refused HDC after review	171
Number on HDC at end of period	62
Number released within this period who went UAL	8
Number of UALs returned to prison in this period	7
Number still UAL at end of period	1
Number of UALs during this period that were released between 18 June - 01 November 2018.	21
Number still UAL at the end of this period who were released between 18 June - 01 November 2018	0
Number still UAL from the 54 UALs identified on 18 June 2018 (not part of the report)	4 (three as of 30 May 2019)
Percentage from sampled 'Refused HDC' files based on presumption.	HMP Low Moss - 40% HMP Addiewell - 40% HMP Barlinnie - 30% HMP Edinburgh - 20% HMP Cornton Vale - 50% HMP Greenock - 40%

Annex C - Prescribed Standard Conditions

Part 1

Prisoners specified in section 3AA(1)(a) of the 1993 Act

1) The offender must be of good behaviour and keep the peace.

2) The offender must not commit any offence.

3) The offender must not tamper with or intentionally damage the electronic monitoring equipment or device(s) used to monitor compliance with curfew conditions complying with section 12AB of the Prisoners and Criminal Proceedings (Scotland) Act 1993(7), or knowingly allow such equipment or device(s) to be tampered with or intentionally damaged.

4) The offender must allow a representative or employee of [name of electronic monitoring service provider] access to the address specified in this licence for the purposes of section 12AB(1)(a) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 to install, check, repair or replace the electronic monitoring equipment or device(s). (Section 12AB was inserted by section 15(10) of the Management of Offenders etc. (Scotland) Act 2005).

Part 2

Prisoners specified in section 3AA(1)(b) of the 1993 Act

1) The offender must be of good behaviour and keep the peace.

2) The offender must not commit any offence.

3) The offender must not tamper with or intentionally damage the electronic monitoring equipment or device(s) used to monitor compliance with curfew conditions complying with section 12AB of the Prisoners and Criminal Proceedings (Scotland) Act 1993, or knowingly allow such equipment or device(s) to be tampered with or intentionally damaged.

4) The offender must allow a representative or employee of *[name of electronic monitoring service provider]* access to the address specified in this licence for the purposes of section 12AB(1)(a) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 to install, check, repair or replace the electronic monitoring equipment or device(s). *(Section 12AB was inserted by section 15(10) of the Management of Offenders etc. (Scotland) Act 2005).*

5) The offender must report forthwith to the officer in charge of the office at *[name and address of the relevant local authority].*

6) The offender must be under the supervision of such officer to be nominated for this purpose from time to time by the Chief Social Work Officer of *[name and address of the relevant local authority]* ("the supervising officer").

7) The offender must comply with such requirements as the supervising officer may specify for the purposes of the offender's supervision.

8) The offender must keep in touch with the supervising officer in accordance with that officer's instructions. 1 Extract from - HOME DETENTION CURFEW, GUIDANCE FOR AGENCIES, Updated April 2018

9) The offender must inform the supervising officer about any change of the offender's place of residence and provide details to the supervising officer about the offender's employment (if any).

10) The offender must not travel outside the United Kingdom of Great Britain and Northern Ireland without the prior permission of the supervising officer.

Explanatory Note

(This note is not part of the Order)

This Order prescribes standard conditions for the purposes of section 12AA of the Prisoners and Criminal Proceedings (Scotland) Act 1993 ("the 1993 Act").

Section 3AA(1) of the 1993 Act gives the Scottish Ministers a power to release on licence, commonly known as a home detention curfew licence, certain prisoners before the date on which they would have served half of their sentence. The power applies in respect of (a) short-term prisoners serving a sentence of three months or more; or (b) long-term prisoners whose release on having served one-half of their sentence has been recommended by the Parole Board.

By virtue of section 12AA(1)(a) of the 1993 Act, a licence must include the standard conditions.

For short-term prisoners these are prescribed in Part 1 of the Schedule to this Order and for long-term prisoners these are prescribed in Part 2 of that Schedule. In relation to all prisoners, as well as the standard conditions, the licence must also, by virtue of section 12AA(1)(b) of the 1993 Act, include a curfew condition complying with section 12AB of that Act. (*Section 12AB was inserted by section 15(10) of the Management of Offenders etc. (Scotland) Act 2005).*

Annex D - Glossary of terms

CAR	Community Access Report
CHS	Criminal Historic System
CJSW	Criminal Justice Social Work
COPFS	Crown Office and Procurator Fiscals Service
EM	Electronic Monitoring
FBA	Field Based Applications
GIC	Governor in Charge
HDC	Home Detention Curfew
HMCIPS	HM Chief Inspector of Prisons for Scotland
HMICS	HM Inspectorate of Constabulary in Scotland
HMIPS	HM Inspectorate of Prisons for Scotland
ICC	Internal Complaints Committee
JAS	The Scottish Government's Justice Analytical Services
OD	Operations Directorate at SPS HQ
OPCAT	Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
PR2	The SPS Prisoner Record System – version 2
PRL	Prison Resource Library
PSS	The Prisoner Supervision System
RMT	Risk Management Team
SCTS	Scottish Courts and Tribunal Service
SOG	Strategic Oversight Group
SOCG	Serious Organised Crime Group
SPS	Scottish Prison Service
SPOC	Single Point of Contact
UAL	Unlawfully at large

HMIPS

INSPECTING AND MONITORING

HM Inspectorate of Prisons for Scotland
Room Y1.4
Saughton House
Edinburgh
EH11 3XD

www.prisonsinspectoratescotland.gov.uk

About Her Majesty's Inspectorate of Prisons for Scotland

HMIPS was established on 1 January 1981, and is required to inspect the 15 prisons across Scotland in order to establish the treatment of, and the conditions for prisoners and to report publicly on the findings.

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