



HM INSPECTORATE OF
PRISONS FOR SCOTLAND

INSPECTING AND MONITORING

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

OCTOBER 2018



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

HM Inspectorate of Prisons for Scotland

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HM INSPECTORATE OF PRISONS FOR SCOTLAND

1. Our purpose

The purpose of HM Inspectorate of Prisons for Scotland (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 our findings. The inspectorate is independent of the Scottish Prison Service (SPS), the Scottish Court Service 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).

2. Background and context

- 2.1 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 7 June 2018 instructing us to undertake an:

“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”

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.

- 2.2 The full Terms of Reference, approved by the Cabinet Secretary for Justice, can be found at **Annex A**.
- 2.3 Additionally, and in terms of section 74(1) of the Police and Fire Reform (Scotland) Act 2012, the Cabinet Secretary wrote in similar terms to HM Inspectorate of Constabulary in Scotland (HMICS) to request an independent assessment of Police Scotland's response to a breach of HDC.
- 2.4 During the period of this review it proved extremely challenging to obtain consistent or reliable data regarding the numbers UAL. During the time the numbers quoted varied and the definitions used for identifying the current status of those originally understood to be UAL were reviewed and amended. These circumstances resulted in different baseline numbers being referenced by HMIPS and HMICS. The information provided in Annex B is based on the information provided by the SPS to the SLWG and which has been adopted by HMIPS for this report, and relates to their defined position as at 18th June 2018. On this date there were 54 individuals who had been released from Scottish prisons on HDC, deemed as being UAL, 26 of whom had been released to an address in England. However, as a result of a lack of consistency with the numbers being provided colleagues from HMICS sought clarity from Police Scotland on the numbers as of 29th June 2018 and at that time they were provided with details of 44 individuals deemed to be UAL on that date. This variance in figures is unfortunate but unavoidable given the fluid nature of the situation and the changing definitions being adopted by SPS and Police Scotland during the period of the review.

Annex B details the information provided to HMIPS by the SLWG, this data could not be independently checked or verified due to the fluid nature of the data. Additionally, **Annex B** contains the final version of the definitions used by SPS and Police Scotland.

- 2.5 HMIPS worked collaboratively with HMICS in preparing the respective terms of reference and continued to work collaboratively throughout the dual review process.

3. Home Detention Curfew

- 3.1** The Prisoners and Criminal Proceedings (Scotland) Act 1993 (as amended by the Management of Offenders etc. (Scotland) Act 2005) provides the power to release prisoners on HDC in Scotland.
- 3.2** 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).
- 3.3** 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 first 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.
- 3.4** In all cases, a mandatory HDC assessment will be carried out before a final decision on HDC eligibility is made by the Unit Manager, on behalf of the Governor.
- 3.5** The decision to release any prisoner on HDC must take into account the following considerations:
 - 3.5.1** protecting the public at large;
 - 3.5.2** preventing re-offending by the offender; and
 - 3.5.3** securing the successful re-integration of the prisoner into the community.
- 3.6** A number of Statutory Exclusions exist, which would preclude an individual from being considered for HDC by legislation:
 - 3.6.1** prisoners who are required to register as sex offenders;
 - 3.6.2** prisoners who are subject to an Extended Sentence;
 - 3.6.3** prisoners who are subject to a Supervised Release Order;
 - 3.6.4** prisoners who are subject to a Hospital Direction;
 - 3.6.5** prisoners awaiting deportation.
- 3.7** The maximum duration for HDC is 180 days (increased from 135 days on 21 March 2008); the minimum period remains 14 days.
- 3.8** Consideration for HDC can only occur once the prisoner has served, whichever is the greater of:
 - 3.8.1** one quarter of their sentence; and
 - 3.8.2** four weeks of their sentence.
- 3.9** All prisoners granted HDC are on licence subject to standard conditions, see **Annex C**, and are subject to a curfew. The standard conditions have been specified by order and differ for long-term and short-term prisoners. In given circumstance, such as to accommodate an individual's working hours, the standard conditions e.g. hours of curfew, can be altered.
- 3.10** Responsibility for monitoring compliance with the curfew condition of the licence lies with the electronic monitoring (EM) service provider, currently G4S, contracted to the Scottish Government to provide this service in Scotland.

- 3.11** Once the decision had been made to release an individual on HDC, the establishment notifies the EM service provider, the local authority and Police Scotland. Where the individual is being released to an address in England or Wales, the local probation service and police force are notified.
- 3.12** 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.
- 3.13** 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, the police are responsible for apprehending the prisoner and returning them to custody.

4. Review methodology

- 4.1** HMIPS inspectors undertook site visits to review local paperwork and processes for compliance against legislation, and the published Guidance for Agencies document (Justice Directorate Guidance document 2005, updated by way of Justice Directorate circular in 2006 and 2008 and by the SPS in 2018). Additionally inspectors interviewed the HDC staff, administrator and Unit Manager within the establishment who held responsibility for overseeing the process and approving or rejecting applications, on behalf of the governor.
- 4.2** A wide-ranging sample of files were reviewed which included those currently on HDC, those who had been recalled from HDC and those that were UAL.
- 4.3** HMIPS inspectors reviewed the following pertinent documents:
- 4.3.1** a report by a short-term working group published in May 2010, which was led by Bill McKinlay of the SPS, entitled 'Operational Review of the Home Detention Curfew Scheme';
 - 4.3.2** a report commissioned and published in 2011 on behalf of the Scottish Government, entitled 'Evaluating the Effectiveness of Home Detention Curfew and Open Estate in Scotland';
 - 4.3.3** all policies and guidance published by the SPS, relevant to the HDC legislation; and
 - 4.3.4** all relevant establishment local operating procedures in the establishments visited.

5. The specific case

- 5.1** Whilst not specifically tasked with looking at the case of Mr Wright, inspectors made a point of undertaking a review of the process applied to his request and application for HDC.
- 5.2** **Annex D** contains a timeline of the critical activities associated with his application and his subsequent recall.

6. Findings

Summary findings from the specific case

- 6.1** The SPS applied the processes as laid out in the guidance for HDC, and all aspects of the paperwork associated with the application process were correctly completed.
- 6.2** Whilst Mr Wright's initial application for HDC was refused, inspectors found that the rationale for this was correctly recorded.

- 6.3** Mr Wright's subsequent application, to a different address, which was deemed suitable by the Local Authority Social Work Department, was also undertaken in line with the guidance.
- 6.4** Whilst it was the case that the application process and his subsequent release on HDC complied with the existing policies and guidance; there are a number of recommendations that, if accepted, have the potential to make the assessment and consideration process more robust.

Process Findings

- 6.5** Missing files for live UAL cases: not all files relating to those currently UAL from HDC could be reviewed, as a number of the older files had been destroyed due to a misinterpretation of general document retention instructions issued by SPS HQ.
- 6.6** Assessment: paragraph 10 of the guidance document states:

".....To help identify which prisoners are most suitable, a robust assessment process has been developed."

Whilst an assessment process clearly existed, it may not be regarded by some to meet the definition of 'robust'. The guidance document did not provide a clear definition of, for example, what type of assessment should be undertaken; what historic offence or behavioural issues to consider; or indeed how far back to look into an individual's offending history. This situation led to different criteria, interpretation or timescales being adopted in different establishments. A more comprehensive and defined assessment process would reduce the inconsistency and enhance the risk mitigation.

- 6.7** Staff undertaking the assessment: The individuals charged with assessing risk, do so often in isolation and without a great deal of assistance or preparation prior to assuming responsibility for this task. It should also be recognised that thousands of these decisions are made on an annual basis, with the vast majority of them proving successful. That said it is also vital that these individuals understand the criticality of this task, and in addition are appropriately supported and trained.
- 6.8** Principal Decision Maker: It should be accepted that, to some extent, risk assessment or evaluation has an individual element, and each Decision Maker could understandably apply different weight or importance to similar information. However, the lack of any bespoke training, clear guidance or awareness for those involved in assessing the risks associated with individual HDC applications only compounds this issue. The delivery of bespoke risk awareness/training activities would assist in mitigating against the potential for variances in assessing the presenting risks. Additionally, if individuals were provided with more detailed guidance in relation to how previous offence behaviour might be considered, it would greatly assist them in coming to more informed and consistent decisions.
- 6.9** Those making decisions to release an individual on HDC do not have access to intelligence held by Police Scotland, nor is it easy for them to access information regarding any outstanding charges, or ongoing investigations relating to the HDC application. This situation makes it difficult to come to an informed decision about an individual's overall suitability for HDC. Integration of Police Liaison Officers into the process and the information contained on the Police National Computer would add depth to the information, and allow the Decision Maker to come to a more informed decision.

6.10 Paragraph 19 of the guidance document states:

“Those prisoners who are not statutorily excluded must undergo a risk assessment.

As only ‘low risk’ prisoners should be released on HDC, short-term prisoners with high or medium supervision levels should not be considered...”

This sentence contains two similar but significantly different conditions that should not be confused. The Prisoner Supervision System (PSS) is used to ensure that prisoners are assigned the lowest supervision level appropriate in relation to their supervision and management whilst within the prison, and does not truly relate to the potential risk presented by that individual within the community.

6.11 Paragraph 28, 90 and 91 of the guidance state:

“In certain cases for short-term prisoners, release on HDC may only be appropriate if additional, specific conditions are included on the licence (over and above the standard and curfew conditions) ...”

“... To allow a supervising officer to be identified, any decision to grant HDC with a non-standard condition of supervision should, if possible, be made at least four weeks in advance ...”

“Where SPS or Criminal Justice Social Work (CJSW) Services wish to include a non-standard condition, such as a condition of alcohol or drugs counselling delivered by the CJSW Services or a third party, it is expected that a supervision condition would also be included in the licence.”

Long-term prisoners released on HDC will be subject to statutory supervision by Criminal Justice Social Work. What was not clear on applications containing additional conditions for short-term prisoners, was how these conditions would be monitored, and by whom in the community. Given that there is no statutory or legislative requirement for other agencies to monitor the person after their release on HDC, it is arguably essential that the additional conditions are accompanied by monitoring arrangements; agreed and arranged in advance and clearly annotated on the licence.

Governance findings

6.12 Although there are a set of standardised documents for managing the HDC process, it was noticeable that not all prisons operated a universal document management system. The Principal method for recording progress of an HDC application is by use of the electronic Prisoner Record System. However, one establishment in particular had developed what appeared to be a comprehensive and effective electronic record for each HDC application, with only the minimal amount of paper documentation being retained. There appeared to be no process by which good practice was identified centrally and then shared with other establishments. If the SPS Headquarters HDC team assumed a role in continuous improvement, such systems could be evaluated and if deemed scalable and appropriate, rolled out across the estate.

6.13 Similarly, there did not appear to be a complete set of dedicated forms or approaches, which had resulted in establishments adopting their own forms and process control documentation. It was abundantly clear that these variations did not undermine the desired outcomes of the process. However, it was surprising to find that a full set of process control documentation had not been developed and rolled-out across all establishments.

6.14 Other than an annual self-audit, there was no evidence of a structured governance system that monitored the quality of the paperwork, adherence to the process, or indeed to look at the consistency of decisions made during the HDC assessment process.

HDC partner agencies findings

Criminal Justice Social Work (CJSW)

6.15 The information provided by CJSW departments, in relation to the suitability of the intended address, varied dramatically. Some areas provided detailed and considered reports about the suitability of the address, whereas others provided limited information on forms that were not signed or dated, or did not indicate the grade or qualifications of the report writer.

6.16 Paragraph 31 of the guidance is unambiguous in stating that:

“... Assessments must be carried out at the proposed address. (The address must be visited unless geographically distant or the prisoner is the sole key holder) Where a prisoner is the sole key holder a second contact name and number should be provided. Where provided, this person will be someone who has access to the property (with permission to enter the property). This information allows CJSW to carry out a suitable home visit to the property, and confirm that the property is suitable for HDC release....”

It was not always clear from the reports if a visit actually took place. Additionally, the qualifications, experience or competence of the person undertaking the assessment was not always clear.

Police

6.17 For someone being released in Scotland, the notification process for Police Scotland included an email being sent to a number of addresses which were detailed within pages 30 to 32 of the guidance document, and are dependent on the location of the address the individual is licenced to. This multiple entry point approach could result in confusion regarding responsibilities in regards to the Police Scotland role in recording or acting upon the information. A single point of contact would reduce the risk.

HDC release out with Scotland

6.18 The situation for those individuals whose home address was in England or Wales was far less clear. Local HDC administrators could spend inordinate amounts of time trying to establish contact details of the parties that needed to be involved or notified as part of the process of assessment and release. In particular, HDC staff found communication with English probation services was particularly challenging as they did not appreciate that they were not required to monitor those on HDC from Scottish establishments, due to differing requirements within the relevant legislation. This was in contrast to their requirement to monitor those sentenced to 12 months or more who are released from English establishments on HDC.

6.19 It was also noted that there was no specific requirement for the individual being released on HDC to provide a contact telephone number. Whilst the HDC equipment placed within the house had a contact number, the EM service provider does not share this with SPS. Unless the individual has provided the SPS with a contact number before leaving the establishment, they have no immediate means of making contact with them should this be required. Where contact numbers had been provided, SPS establishments were able to communicate directly with the individual, should there be a requirement to do so. For example, to speak to them regarding the importance of strict compliance with the terms of their curfew. Inspectors were made aware of some good practice in some establishments where the HDC co-ordinators contacted the individual, after a minor breach, to make sure they understood the potential consequences should such a situation reoccur.

- 6.20** Should a decision be made to revoke an individual's HDC licence and recall them to custody, it is the SPS who inform Police Scotland for those licenced to an address in Scotland, and the local Police authority for those licenced to an English address. Additionally, the EM service provider, the local authority or probation providers are also notified. The notification process involves an email communication to the same agencies that were notified that the person was being released on HDC.
- 6.21** It was surprising to note that the SPS did not receive any notification from the Police that an email had been received, or confirmation that appropriate action would be taken.
- 6.22** Once a recall has been initiated by the SPS there was little, if any, further communication with the other agencies until the individual was returned to custody. It was noted that the SPS do not make regular contact with the Police to seek updates on progress made, or actions taken to apprehend the individual.
- 6.23** It was surprising to note that the SPS do not currently communicate with individuals who have been recalled to custody to inform them they have been recalled and the reasons why.

7. Conclusions

- 7.1** It was evident that the SPS and Police Scotland had undertaken internal reviews of their processes since the announcement by the Cabinet Secretary for Justice of the joint HMIPS and HMICS' review of HDC. The establishment of a joint short-life working group to look at identifying improvements to the operation of the HDC process was a welcome response.
- 7.2** Many thousands of individuals from Scottish prisons have undertaken a period of HDC, the vast majority of whom have successfully completed periods of up to six months in the community. It was evident through the process of this review that HDC had assisted a considerable number of individuals to successfully re-integrate into their communities. Many of whom had found employment during their time on HDC. However, if HDC is truly to deliver on the three key principles of:
- 7.2.1** protecting the public at large;
 - 7.2.2** preventing re-offending by the offender; and
 - 7.2.3** securing the successful re-integration of the prisoner into the community.

The assessment process for HDC should be reviewed to ensure that it continues to address the original objectives. It is clear that HDC has a key role to play, for many individuals, in successfully re-integrating those, sentenced to prison, back into their communities. However, to ensure ongoing public confidence in this important and potentially transformative aspect of the criminal justice system in Scotland a review of the assessment process for HDC should be undertaken.

- 7.3** The success of HDC requires strong collaboration between the SPS, Local Authorities, Police Scotland and the EM service provider. This is essential to ensuring that only those individuals who meet the clearly defined criteria are released on HDC. Additionally, when it is necessary to recall someone to custody it is vital that this collaboration is undertaken efficiently, effectively and with due regard for public safety.

RECOMMENDATIONS

Given that this review was undertaken over a four month period and there was significant activity on the part of the SPS and Police Scotland the recommendations below are laid out in such a fashion that demonstrates, where appropriate, developments and changes to process adopted by either or both parties.

HMIPS and HMICS were invited to attend the Short Life Working Group initiated by SPS and Police Scotland in June 2018, and as such have been witness to these discussions and are aware of the changes proposed or made.

Where noted, HMIPS are not stating that these changes are working, have delivered the desired outcomes or are sustainable, as we are not sighted to their impact in the field. It is for the organisations involved in the processes to provide that assurance. However, it was felt that it was important that we reported on the work of the SLWG during the period that of the review.

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.

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 in custody, etc. This would also provide a greater degree of consistency.

SLWG Activity or Progress: this has been recognised by the SLWG as an area of attention and some work in updating the guidance document has already been effected. It is recognised that this will require further and more extensive work including the involvement of the Scottish Government and Criminal Justice Social Work' before completion.

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.

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 re-offending, or the risk they pose to themselves or others, when in the community.

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, it is essential that these additional conditions are accompanied by monitoring arrangements; agreed and arranged in advance and clearly annotated on the licence. If this is not possible, then serious consideration should be given to not granting HDC.

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 Scottish Court and Tribunals Service and the Crown Office and Procurator Fiscal Service before making the decision to release someone on HDC.

SLWG Activity or Progress: This has been recognised by the SPS and the Police Scotland as an area requiring attention, and some work on improved information sharing has already occurred. However, the full extent of any changes to current arrangements had not been documented for review at the time of writing.

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 HDC4 must, as an absolute minimum, be fully completed and signed, with the qualification of the report writer clearly annotated.

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.

Recommendation 9

The SPS should ensure that the appropriate standardised corporate documentation is being utilised in all establishments, and a clarification of retention instructions should be issued by SPS HQ. Developed good practice observed in the field should be adopted where appropriate.

Recommendation 10

A single point of contact for notifying Police Scotland of intended releases and recalls must be established.

SLWG Activity or Progress: This situation has been addressed through work undertaken through the SLWG and was implemented during September 2018.

Recommendation 11

Serious consideration should be given to temporarily suspending HDC releases outwith 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.

SLWG Activity or Progress: This issue was escalated to the SPS during the review period and HMIPS received the following assurance.

A single point of contact (SPOC) has been identified in each of the 43 Police Forces in England and Wales. Where an individual is released from Scotland under HDC arrangements, or recalled to custody for a breach of licence, the SPS make contact with

the SPOC in the relevant Police Force and all relevant paperwork is submitted to them for action. In the event of an HDC recall to custody being initiated, the person at large is sent a notice of the revocation of their licence, the National Probation Service is notified and the relevant Police Force in England and Wales is alerted. The Police SPOC should then place this information on the Police National Computer (PNC) highlighting that the individual is 'unlawfully at large'. In addition the Police Scotland SPOC is also notified of the breach of licence. This control measure provides an additional layer of assurance, in so much as Police Scotland will monitor the PNC on a weekly basis to ensure that all breaches of licence have been registered on the system and where they find that information has not been added to the PNC, Police Scotland will update the records to ensure that the breach of licence has been formally logged.

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.

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.

SLWG Activity or Progress: This was agreed by the SPS and implemented shortly after the commencement of the SLWGs activity.

Recommendation 14

The SPS Headquarters based 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.

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.

Recommendation 16

The SPS should develop an agreement on regular and ongoing contact with the Police until an individual UAL has been apprehended and returned to custody

SLWG Activity or Progress: This recommendation has been acted upon and come to fruition through the work of the SLWG.

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.

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.

Recommendation 19

Justice Analytical Services should record and report annually on reconviction rates for those released under HDC in their reporting of reconviction rates.

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.

Recommendation 21

There is a wide variety of anecdotal evidence from prison staff, partner agencies 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. Research should be commissioned to look at the impact of HDC on the successful reintegration of prisoners back into the community.

Wendy Sinclair-Gieben

HM Chief Inspector of Prisons for Scotland

October 2018

ANNEX A

Review of the arrangements for Home Detention Curfew

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 (HMCIPS) "to investigate specific matters connected with prisons or prisoners which have been referred to the Chief Inspector by the Scottish Minister".

In accordance with the relevant Act, HMCIPS received a letter from the Cabinet Secretary instructing HMCIPS to undertake an:

"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"

Additionally, and in terms of section 74(1) of the Police and Fire Reform (Scotland) Act 2012, the Cabinet Secretary wrote in similar terms to HM Inspector of Constabulary in Scotland (HMICS) to provide an independent assessment of Police Scotland's response to a breach of HDC. HMCIPS worked collaboratively with HMICS in preparing the respective terms of reference and will continue to work collaboratively together throughout the dual review process.

Terms of Reference

Following the recent conviction of Mr James Wright for murder – an offence he committed following his release on Home Detention Curfew (HDC) in February 2017, undertake a review of the processes (policy and guidance) that the SPS operate when considering applications for HDC and report on any areas where the SPS should review, alter or improve their approach.

The investigation will involve:

- Identifying and reviewing the processes deployed by the Scottish Prison Service (SPS) to identify those meeting the defined criteria
- Undertaking establishment visits to review historical paperwork to assess compliance with the published policy guidance
- Establishing the hierarchy of responsibilities within the establishment for the approval of individuals deemed appropriate to release on HDC
- Reviewing the governance surrounding the HDC process at local and national level
- Reviewing the arrangements within SPS for notifying Police Scotland when it is intended to release a prisoner on HDC
- Reviewing the immediate processes where an HDC recall notice is issued by SPS to Police Scotland following a breach; and any ongoing co-ordination between SPS and Police Scotland whilst an individual remains 'unlawfully at large'
- Identify and report on any lessons that have been learnt from this case and that the SPS have applied in the interim
- Make recommendations for changes or improvements, if any shortcomings or inconsistencies exist
- Identify any areas of best practice

Should anything of immediate concern be identified these will be escalated to the SPS' CEO as a matter of urgency.

This investigation and review to be presented to the Cabinet Secretary for Justice in September 2018.

Jim Farish,
Deputy Chief Inspector of Prisons for Scotland

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ANNEX B

Data provided by SPS and Police Scotland via the SLWG of those unlawfully at large

The following table shows the status as of 21 September 2018 of the original list of 54 subjects defined as UAL on 18 June 2018:

Original dataset at 18 June 2018		Scotland	England
Recall Served	24	13	11
UAL	6	3	3
Pending	7	2	5
In Custody	9	5	4
Time in Custody on Other Matters	8	5	3
Total:	54	28	26

SPS' & Police Scotland's Definitions

Recall Served	The individual has returned to custody and served the outstanding period of their sentence before being liberated.
UAL	After due diligence of all enquiries the individual is still considered unlawfully at large and the recall notice to custody should be actioned.
Pending	Enquiries are still ongoing to determine the status of the prisoner. Information exists on SPS or PSoS systems that indicate that the prisoner may not still be unlawfully at large.
In Custody	The individual is currently being held in custody of SPS or Her Majesty's Prison & Probation Service (England & Wales) serving their recall or being detained on other matters.
Time in Custody on Other Matters	On completion of enquiries it has been identified that the individual has sent time in custody on other matters during the period they were recorded as UAL. This time is equivalent to or greater than the outstanding number of days to serve from the original sentence.

The above definitions represent the final version adopted by the SLWG and provided to HMIPS on 21 September 2018.

ANNEX C

Prescribed Standard Conditions¹

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

**SPS HDC TIMELINE FOR
JAMES WILLIAM WRIGHT
PRISON NO. 133599**



13th December 2016

Refused initial HDC request
(unsuitable address)

10th January 2017

Proceed to community assessment
approved

30th January 2017

HDC application approved and
signed off

13th February 2017

Released from HMP Low Moss on HDC

09:19-24th February 2017

Recall approved

9th January 2017

HDC initiated for an alternative
address lodged

25th January 2017

Home Report received and address
assessed as suitable

6th February 2017

Police, Social Work and G4S notified
of HDC release date and details

02:15-23rd February 2017

Strap Tamper alert received at G4S
monitoring facility

10:07-24th February 2017

Police emailed to inform them that HDC
had been revoked he is now officially
'unlawfully at large'

ANNEX E

Inspectors involved in fieldwork

Jim Farish, Deputy Chief Inspector of Prisons for Scotland

Calum McCarthy, Inspector of Prisons

ANNEX F

Glossary of terms

EM	Electronic Monitoring
HDC	Home Detention Curfew
HMICS	HM Inspectorate of Constabulary in Scotland
HMIPS	HM Inspectorate of Prisons for Scotland
PSS	The Prisoner Supervision System
RMT	Risk Management Team
SPS	Scottish Prison Service
SPOC	Single Point of Contact
UAL	Unlawfully at large



HM Inspectorate of Prisons for Scotland is a member of the UK's National Preventive Mechanism, a group of organisations which independently monitor all places of detention to meet the requirements of international human rights law.

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