

Equalities Statement: Sentencing Bill - Changes to the Home Detention Curfew Scheme

Introduction

1. The purpose of the HDC scheme is to manage more effectively the transition of offenders from custody back into the community. The scheme enables prisoners to be released from prison early, while remaining subject to significant restrictions on their liberty.
2. The aim of the changes we are seeking to make is to extend access to HDC to offenders who are currently excluded from consideration for the scheme by virtue of the length of their sentence or previous history of being recalled or returned to custody. Specifically, we want to:
 - allow prisoners serving standard determinate sentences of four years or more to be considered for HDC, provided their sentence is one where, if the offender were sentenced under current legislation, they would be subject to automatic release at the halfway point of their sentence.
 - replace the lifetime ban on accessing HDC for prisoners who have been recalled to prison for breach of the HDC curfew conditions, with one that only applies where the recall to custody was still being served less than two years before the date when the current sentence was imposed; and
 - remove the ban on access to HDC for prisoners who under long-repealed provisions, were returned to prison after committing a further imprisonable offence between release from custody and the end of their sentence.

Policy summary

3. The Criminal Justice Act 2003 (the 2003 Act) requires that, with some exceptions, prisoners serving standard determinate sentences must be released at the halfway point of the sentence. The 2003 Act also provides for an HDC scheme which allows for certain prisoners to be released up to 180 days before the halfway point. The scheme applies to those serving standard determinate sentences of at least 12 weeks but less than four years and they must serve at least a quarter of their sentence or 28 days in prison (whichever is greater).
4. Certain offenders are statutorily excluded from release under the scheme, including registered sex offenders and terrorist offenders. Others are, as a matter of policy, presumed unsuitable for the scheme in the absence of exceptional circumstances. This includes those convicted of sexual offences but not required to register; those currently serving sentences of imprisonment for specified categories of offending - such as child cruelty, stalking and other specified offences linked to domestic abuse, and offensive weapons possession offences; and offenders liable to removal from the UK but not yet served with a decision to deport.
5. Eligible offenders can be released on HDC where they can be safely managed in the community on HDC. The release decision is made by the prison governor (or delegated senior manager) based on available evidence, including a specific assessment of the address conducted by Probation. On release, the offender must be subject to an electronically monitored curfew for at least 9 hours, and generally 12 hours, per day as a matter of policy. The curfew requirement must remain in force until what would have been the conditional, or automatic release date at the halfway point of the sentence. As with any offender under probation supervision, those released on HDC may be recalled

back to custody if they breach their licence conditions, but specifically for offenders on HDC, also if they tamper with the monitoring equipment or if circumstances change and they can no longer be monitored.

Public Sector Equality Duty aims

6. Section 149 of the Equality Act 2010 (“the 2010 Act”) places a duty on Ministers and the Department, when exercising their functions, to have ‘due regard’ to the need to:
 - eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the 2010 Act;
 - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and,
 - foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
7. When having due regard, these limbs must be proportionately considered taking into account the relevant “protected characteristics” under the Equality Act 2010 – namely race, sex, disability, sexual orientation, religion or belief, age, gender reassignment, pregnancy and maternity.

Evidence and analysis – context

8. The main source of information used for this analysis is the latest Ministry of Justice’s *Criminal Justice System statistics quarterly*⁴². As it is not possible to directly identify offenders who would be eligible for HDC, a proxy is used instead. This proxy excludes offences and sentences which are not eligible for HDC, and looks at those sentenced to between 12 weeks and 4 years.
9. Publicly available data about protected characteristics is unavailable for sentenced offenders who may be eligible for HDC with the exception of their sex, age, and ethnicity. While there may be other prisoners with protected characteristics eligible for release on HDC, their eligibility is determined by the length and type of their sentence according to the 2003 Act and the policy, and not with regard to their protected characteristic.
10. This analysis focuses on the impact of the change to the upper sentence length limit for HDC eligibility proposed above as there is available data that lends itself to comparative analysis. We do not have data that allows us to assess the equalities impact of the recall and return to custody changes. Therefore, when we refer to the “affected groups” below we are primarily talking about those serving sentences of 4 years or more who will now be eligible for HDC.

Affected Groups

11. The proposed changes will have a direct impact on those offenders who are serving sentences of imprisonment of 4 years or more and who would meet the eligibility criteria for the HDC scheme.
12. For this equalities analysis we are comparing the affected group, those who will become eligible for HDC who are serving a sentence of imprisonment of 4 years or more, with those who are currently eligible for HDC, namely those eligible for HDC who are serving a sentence of more than 12 weeks and less than 4 years’ imprisonment.

13. Published data that would inform whether individuals among the affected group with certain protected characteristics will be disproportionately affected is limited. However, sentencing data provides information according to some characteristics: sex, ethnicity and age.
14. This data^[3] suggests that some characteristics may be overrepresented in the population affected by this policy (those eligible for HDC who are serving sentences over 4 years or more) compared to the current HDC eligible population (those eligible for HDC who are serving more than 12 weeks and less than 4 years)^[4]. Specifically:
 - Older people appear to be overrepresented; in 2022, of the affected group (4 or more years), 10% were aged 50 or over (where age was recorded). In contrast, of all of the current HDC eligible group (12 weeks to 4 years), 8% were aged 50 or over.
 - Some ethnic groups also appear to be overrepresented; in 2022, of the affected group (4 or more years), ethnicity was recorded as Black in 16% of sentences and Asian in 12% (where ethnicity was recorded), compared to 10% and 7% respectively for the current HDC eligible group (12 weeks to 4 years).
 - Males appear to be overrepresented; in 2022, of the affected group (4 or more years), 4% were female (where gender was recorded). In contrast, of all of the current HDC eligible group (12 weeks to 4 years), 6% were female.
15. Sentencing data is only able to indicate imbalances within the group of those sentenced to custody and potentially eligible for HDC, and not according to actual releases on HDC. As such, this does not take account of any disproportionality in release rates. However, as the affected group (on sentences of 4 or more years) is not currently eligible for HDC, data on releases for this group is not currently available and it is not possible to make such a comparison.
16. By virtue of the overrepresentation of the groups noted above, we acknowledge that any positive impacts arising from the extension of the maximum period of HDC will benefit those groups of prisoners listed above relative to the current HDC eligible population (on sentences of 12 weeks to 4 years).

Eliminating unlawful discrimination, harassment, etc

17. Direct discrimination occurs when a policy would result in people being treated less favourably because of a protected characteristic. Our assessment is that this policy is not directly discriminatory within the meaning of the 2010 Act, as the changes from this policy will apply in the same way to all prisoners eligible for HDC under the new criteria, regardless of their protected characteristics.
18. Indirect discrimination occurs when a policy applies equally to all individuals but would put those sharing a protected characteristic at a particular disadvantage compared to those who do not.
19. Our assessment is that extending HDC to prisoners serving longer sentences does not cause particular disadvantage to any person due to their protected characteristics, subject to the over representation of certain protected characteristics as explained below. All newly eligible offenders will benefit (though their release on HDC will be subject to appropriate risk assessment). If it could be shown that people with a certain protected characteristic were put at a particular disadvantage, we believe it is a proportionate means of achieving our legitimate aim which is to extend the scheme to

all, regardless of sentence length. It is important to note that HDC is subject to risk assessment, and it may be that those serving longer sentences will be more likely to fail the assessment, which may address any imbalance if those overrepresented have more serious offences.

20. As noted above, the available data suggests that some groups are overrepresented in the population impacted by the policy (those sentenced to 4 years or more) compared to the current HDC eligible population. We do not propose any mitigating action because the changes proposed (including the changes to restrictions on access to HDC by prisoners previously recalled or returned to custody) benefit all individuals equally whether they are in the overrepresented or underrepresented groups and there is no change that could be made fairly to the HDC criteria that could change this overrepresentation in the longer sentenced cohort. Waiving some of the other criteria to allow individuals to access HDC more easily due to their protected characteristics, for example, would undermine public confidence in the administration of justice as well as being potentially discriminatory.

Discrimination arising from disability and duty to make reasonable adjustments

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

Advancing Equality of Opportunity

22. Consideration has been given to how these proposals impact on the duty to advance equality of opportunity by meeting the needs of prisoners eligible for HDC who share a protected characteristic, where those needs are different from the needs of those who do not share that protected characteristic.
23. This legislation will mean that some prisoners will now be eligible for release on HDC, namely those sentenced to 4 years or more or with old recalls/returns to custody on their records. Earlier resettlement will limit some of the harmful effects of custody which will have a positive impact for the affected offenders and their families; for example, the chance of earlier re-employment which will help them support themselves and their families earlier in the sentence.

Fostering Good Relations

24. Our assessment is that extending HDC in the way proposed is unlikely to impact on fostering good relations between groups with different protected characteristics.

Continuing Analysis

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

^[1] http://www.legislation.gov.uk/ukpga/2010/15/pdfs/ukpga_20100015_en.pdf

- [2] Criminal Justice System statistics quarterly: December 2022.
<https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2022>
- [3] The source data is the 'Sentence outcomes' table in the 'Outcomes by Offence data tool' workbook of the Criminal Justice System statistics quarterly: December 2022.
- [4] Custodial sentences of 'More than 2 months and under 3 months' have been excluded in calculating the total HDC eligible population due to how the data is split in the table, although offenders serving at least 12 weeks may be eligible for HDC.