

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

Margaret Mitchell MSP
Justice Committee Convener
justicecommittee@parliament.scot

10 April 2020

Dear Margaret,

Home Detention Curfew (HDC)

As you will know, in October 2018, HM Chief Inspector of the Constabulary (HMICS) and HM Chief Inspector of Prisons (HMIPS) previously recommended the introduction of a presumption against release on HDC for certain groups of prisoners, this was one of 37 recommendations which I accepted in full. This was the right decision at that time to ensure that there was confidence in the HDC system while we looked at a number of areas around how HDC was operating.

Since then significant work has been carried out to develop revised HDC guidance which strengthens the current HDC regime through introducing a more sophisticated and robust system of risk assessment. The revised guidance, jointly developed by the Scottish Prison Service and the Risk Management Authority (RMA), accords with best practice on risk assessment in Scotland – the FRAME principles and standards. I was pleased to be able to submit this to the Justice Committee earlier this year in the form of the HDC Operating Protocol.

As you may be aware, the current HDC guidance provides significantly more detail on how SPS decision-makers are to consider the function, relevance and context of an individual's offending, including previous offences. Therefore aspects of the release decision that the presumption was there to address - history of violent offending, offences involving weapon use and indications of involvement in organised crime - are now captured under several domains within the revised HDC assessment process.

In the current exceptional circumstances our country now faces, I am also acutely aware that SPS need to be able to utilise all the tools at their disposal to effectively manage their prison population in response to Covid-19. HDC remains one of the key tools available to help move people towards the end of their sentence out of the prison environment onto curfew within the community.

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

St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot

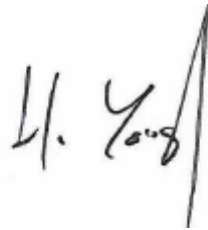


Accredited
Until 2020



I have always been clear that HDC release decisions should be considered on a case-by-case basis and should be considered in accordance with the available information on relevant risk factors. The presumption, framed as it was around some of the broad recommendations, served a purpose for a period of time - prior to the introduction of the more sophisticated and robust system of risk assessment that we now have in place. It is particularly important now though that our approach to prison release does not unnecessarily constrain staff from following the RMA endorsed approach which involves looking at each case on its own merits. I am therefore writing to inform you that I have asked SPS staff and my officials to amend the HDC guidance and that this includes the removal of references to the HDC presumption.

This has been carried out in full consultation with both the HMIPS and HMICS and I enclose relevant letters that they sent me making their position clear on this matter. The impact of the changes will be kept under review and I will continue to keep the Justice Committee informed of relevant developments.



HUMZA YOUSAF

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

St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot



INVESTORS
IN PEOPLE

Accredited
Until 2020



Responses from HMICS and HMIPS

HMICS

Dear Cabinet Secretary,

Thank you for your letter relating to Home Detention Curfew (HDC) and specifically the removal of the presumption against release for certain groups of prisoners.

At the time of the HMICS review, I felt it was important to emphasise the principles of HDC that were already in existence, namely to protect the public; prevent reoffending, and secure successful reintegration into the community. One of the HMICS recommendations was that there needed to be a national policy on risk factors that assesses the eligibility of an offender for release on HDC and the suitability for release.

Under the 'suitability' aspect we highlighted a number of special cases: those who were convicted and sentenced to imprisonment for possession of offensive weapons; for violence, or links to organised crime, (ie the index offence, not the whole offending history). In such cases, we recommended that there should be a presumption of refusal unless there were robust qualifying reasons to support HDC. For clarity the recommendation was not intended to automatically debar any such person from being suitable for HDC.

HMICS welcomes the development in the risk assessment process and guidance, which are key to making an informed decisions in line with the aforementioned key principles of protecting the public. The presumption of refusal is not necessary provided there is a robust risk assessment process in place.

Thank you again for taking the time to keep me informed on this important matter.

Your sincerely,

Gill

Gill Imery
HM Chief Inspector of Constabulary
HMICS

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

St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot



INVESTORS
IN PEOPLE

Accredited
Until 2020



HMIPS

Dear Cabinet Secretary for Justice,

Thank you for your letter received yesterday, 31 March 2020, in which you advise of the decision to remove the presumptions from the HDC guidance originally recommended by HMICS. Whilst HMIPS recognise that the recommendations did not seek to automatically exclude any such person from being considered suitable for HDC, the practical application did appear to make that the default position.

In light of the current circumstances, and the further recent improvements made to the HDC assessment process, I welcome this approach and agree that the current more in-depth risk assessment precludes the necessity of the presumptions being an integral part of the process. I would, however, like to seek reassurance that the impact of removing the presumptions is monitored, and reported on, within reasonable timeframes.

Kind regards
Wendy

Wendy Sinclair-Gieben
HM Chief Inspector of Prisons, Scotland

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

St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot



INVESTORS
IN PEOPLE

Accredited
Until 2020

